Chap.		Sec.
30.	Community Reinvestment [New]	2901
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32.	Foreign Bank Participation in Domestic Markets [New]	3101
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CHAPTER 2—NATIONAL BANKS

SUBCHAPTER IV—REGULATION OF THE BANKING BUSINESS; POWERS AND DUTIES OF NATIONAL BANKS

Sec.

86a. Rates of interest for financial institutions chartered pursuant to statutes of the United States [New].

(a) Business or agricultural loans of $25,000 or more.

(b) Forfeiture of excessive interest; recovery.

NATIONAL BANK ACT REFERRED TO IN OTHER SECTIONS

Sections 21 et seq. of this title are referred to in sections 35, 40, 41, 377, 501a, 1440, 1817, 2254, 3102 of this title; title 15 section 19; title 18 section 334; title 28 section 1348.

SUBCHAPTER I—ORGANIZATION AND GENERAL PROVISIONS

§ 24. Corporate powers of associations

REFERENCES IN TEXT

In par. Seventh, on page 9 of the main volume, references to "subsection (b) of section 22 of the United States Housing Act of 1937" and "said subsection 22(b)" should be references to "section 6(g) of the United States Housing Act of 1937" pursuant to the amendment made by Pub. L. 93-383.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 335, 371c, 378, 1733, 1841, 1843, 3102 of this title; title 22 sections 283i, 286k-1, 286k-2.

§ 26. Comptroller to determine if association can commence business

Whenever a certificate is transmitted to the Comptroller of the Currency, as provided in this chapter, and the association transmitting the same notifies the comptroller that all of its capital stock has been duly paid in, and that such association has complied with all the provisions of this chapter required to be complied with before an association shall be authorized to commence the business of banking, the comptroller shall examine into the condition of such association, ascertain especially the amount of money paid in on account of its capital, the name and place of residence of each of its directors, and the amount of the capital stock of which each is the owner in good faith, and generally whether such association has complied with all the provisions of this chapter required to entitle it to engage in the business of banking; and shall cause to be made and attested by the oaths of a majority of the directors, and by the president or cashier of the association, a statement of all the facts necessary to enable the comptroller to determine whether the association is lawfully entitled to commence the business of banking.

(R.S. § 5168; Pub. L. 86-230, § 2, Sept. 8, 1959, 73 Stat. 457.)

CODIFICATION

Section is set out in this supplement to correct typographical error appearing in the main edition.

§ 27. Certificate of authority to commence banking

If, upon a careful examination of the facts so reported, and of any other facts which may come to the knowledge of the comptroller, whether by means of a special commission appointed by him for the purpose of inquiring into the condition of such association, or otherwise, it appears that such association is lawfully entitled to commence the business of banking, the comptroller shall give to such association a certificate, under his hand and official seal, that such association has complied with all the provisions required to be complied with before commencing the business of banking, and that such association is authorized to commence such business. But the comptroller may withhold from an association his certificate authorizing the commencement of business, whenever he has reason to suppose that the shareholders have formed the same for any other than the legitimate objects contemplated by this chapter. A National Bank Association, to which the Comptroller of the Currency has heretofore issued or hereafter issues such certificate, is not illegally constituted solely because its operations are or have been required by the Comptroller of the Currency to be limited to those of a trust company and activities related thereto.

(As amended Pub. L. 95-630, title XV, § 1504, Nov. 10, 1978, 92 Stat. 3713.)

AMENDMENTS

1978—Pub. L. 95-630 added provision that a National Bank Association, to which the Comptroller of the

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Currency has heretofore issued or hereafter issues such certificate, is not illegally constituted solely because its operations are or have been required by the Comptroller of the Currency to be limited to those of a trust company and activities related thereto.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1505 of Pub. L. 95-630 provided that: "This title [amending sections 27, 1715z-10, and 2902 of this title and amending a provision set out as a note under section 1666f of Title 15, Commerce and Trade] shall take effect upon enactment [Nov. 10, 1978]."

§ 36. Branch banks

APPLICABILITY OF MCFADDEN ACT TO PRESENT FINANCIAL ENVIRONMENT; REPORT AND RECOMMENDATIONS BY PRESIDENT TO CONGRESS

Pub. L. 95-369, § 14, Sept. 17, 1978, 92 Stat. 625, provided that:

"(a) The President, in consultation with the Attorney General, the Secretary of the Treasury, the Board, the Comptroller, and the Federal Deposit Insurance Corporation, shall transmit a report to the Congress containing his recommendations concerning the applicability of the McFadden Act [Act Feb. 25, 1927, ch. 191, 44 Stat. 1224] to the present financial, banking, and economic environment, including an analysis of the effects of any proposed amendment to such Act on the structure of the banking industry and on the financial and economic environment in general.

"(b) The report required by subsection (a) shall be transmitted to the Congress not later than one year after the date of enactment of this Act [Sept. 17, 1978]."

SUBCHAPTER III—DIRECTORS

§ 72. Qualifications

Every director must, during his whole term of service, be a citizen of the United States, and at least two-thirds of the directors must have resided in the State, Territory, or District in which the association is located, or within one hundred miles of the location of the office of the association, for at least one year immediately preceding their election, and must be residents of such State or within one-hundred-mile territory of the location of the association during their continuance in office, except that in the case of an association which is a subsidiary or affiliate of a foreign bank, the Comptroller of the Currency may in his discretion waive the requirement of citizenship in the case of not more than a minority of the total number of directors. Every director must own in his own right shares of the capital stock of the association of which he is a director the aggregate par value of which shall not be less than $1,000, unless the capital of the bank shall not exceed $25,000, in which case he must own in his own right shares of such capital stock the aggregate par value of which shall not be less than $500. Any director who ceases to be the owner of the required number of shares of the stock, or who becomes in any other manner disqualified, shall thereby vacate his place.

(As amended Sept. 17, 1978, Pub. L. 95-369, § 2, 92 Stat. 608.)

AMENDMENTS

1978—Pub. L. 95-369 authorized the Comptroller of the Currency, in the case of associations which are the subsidiaries of affiliates of foreign banks, to waive the citizenship requirements of not more than a minority of the total number of directors.

SUBCHAPTER IV—REGULATION OF THE BANKING BUSINESS; POWERS AND DUTIES OF NATIONAL BANKS

§ 84. Limit of liability of any person to bank

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 82, 248, 345, 375b of this title; title 31 section 753.

§ 85. Rate of interest on loans, discounts and purchases

Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater or in the case of business or agricultural loans in the amount of $25,000 or more, at a rate of 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located, and no more, except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this chapter. When no rate is fixed by the laws of the State, or Territory, or District, the bank may take, receive, reserve, or charge a rate not exceeding 7 per centum, or 1 per centum in excess of the discount rate on ninety day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater or in the case of business or agricultural loans in the amount of $25,000 or more, at a rate of 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run. The maximum amount of interest or discount to be charged at a branch of an association located outside of the States of the United States and the District of Columbia shall be at the rate allowed by the laws of the country, territory, dependency, province, dominion, insular possession, or other political subdivision where the branch is located. And the purchase, discount, or sale of a bona fide bill of exchange, payable at another place than the place of such purchase, discount, or sale, at not more than the current rate of exchange for sight drafts in addition to the interest, shall not be considered as taking or receiving a greater rate of interest.

(R.S. § 5197; June 16, 1933, ch. 89, § 25, 48 Stat. 191; Aug. 23, 1935, ch. 614, § 314, 49 Stat. 711; Oct. 29, 1974, Pub. L. 93-501, title II, § 201, 88 Stat. 1558; Nov. 5, 1979, Pub. L. 96-104, title I,

§ 101, 93 Stat. 789; Dec. 28, 1979, Pub. L. 96-161, title II, § 201, 93 Stat. 1235.)

CODIFICATION

Section 101 of Pub. L. 96-104, set out in the credit of this section, was repealed by section 212 of Pub. L. 96-161, effective at the close of Dec. 27, 1979. The amendment of this section by that repealed provision, described in the 1979 Amendment note set out below, shall continue in effect for limited purposes pursuant to section 212 of Pub. L. 96-161. See Savings Provisions note, describing the provisions of section 212 of Pub. L. 96-161, set out below. The amendment by Pub. L. 96-104, § 101, was duplicated with identical language in the amendment made by Pub. L. 96-161, § 201. See 1979 Amendment note below.

Section 201 of Pub. L. 93-501, set out in the credit of this section, was repealed by Pub. L. 96-104, § 1, Nov. 5, 1979, 93 Stat. 789. The amendment of this section by that repealed provision, described in the 1974 Amendment note set out under this section, in the main edition, was duplicated in 1979 with identical language under section 101 of Pub. L. 96-104. See 1979 Amendment note below.

AMENDMENTS

1979—Pub. L. 96-161 inserted provisions relating to a 5 per centum interest rate on business or agricultural loans in the amount of $25,000 or more that were identical to provisions inserted earlier by Pub. L. 96-104. See Codification note above.

Pub. L. 96-104 substituted "or in the case of business or agricultural loans in the amount of $25,000 or more, at a rate of 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located, whichever may be the greater" for "whichever may be the greater" in two places. See Codification note above.

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96-161 applicable to loans made in any State during the period beginning on Dec. 28, 1979, and ending on the earliest of (1) in the case of a State statute, July 1, 1980; (2) the date, after Dec. 28, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section made by Pub. L. 96-161 to apply with respect to loans made in such State; or (3) the date on which such State certifies that the voters of such State, after Dec. 28, 1979, have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment to the constitution of such State which prohibits the charging of interest at the rates provided in the amendment of this section by Pub. L. 96-161, see section 207 of Pub. L. 96-161, set out as an Effective Date of 1979 Amendments note under section 1831a of this title.

Amendment by Pub. L. 96-104 applicable to loans made by any State during the period beginning on Nov. 5, 1979, and ending on the earlier of July 1, 1981, or the date after Nov. 5, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section to apply with respect to loans made in such State, or the date on which such State certifies that the voters of such State have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State, which prohibits the charging of interest at the rates provided in the amendment of this section, see section 107 of Pub. L. 96-104, set out as an Effective Date of 1979 Amendments note under section 1831a of this title.

EFFECTIVE AND TERMINATION DATES OF 1974 AMENDMENT

Amendment by Pub. L. 93-501 applicable to loans made in any state after Oct. 29, 1974, but prior to the earlier of July 1, 1977, or the date (after Oct. 29, 1974) of enactment by the state of a law prohibiting the charging of interest at the rates provided in the amendment of this section, see section 206 of Pub. L. 93-501, set out as a note under section 1831a of this title.

SAVINGS PROVISIONS

Section 212 of Pub. L. 96-161 provided in part that, notwithstanding the repeal, effective at the close of Dec. 27, 1979, of Pub. L. 96-104 [which had enacted sections 86a, 371b-1, 1730e, and 1831a of this title, amended sections 85, 1425b, and 1828 of this title and section 687 of Title 15, Commerce and Trade, repealed former sections 371b-1, 1730e, and 1831a of this title and notes set out under former sections 371b-1 and 1831a of this title, and enacted provisions set out as notes under this section and sections 86a, 371b-1, and 1831a of this title], the amendment which had been made by title I of Pub. L. 96-104 and the provisions of that title would continue to apply to any loan made in any State on or after Nov. 5, 1979, but prior to the repeal of Pub. L. 96-104, and that the amendments made by title II of Pub. L. 96-104 would continue to apply to any deposit made or obligation issued in any State on or after Nov. 5, 1979, but prior to the repeal of Pub. L. 96-104.

Section 1 of Pub. L. 96-104 provided in part that, notwithstanding the repeal of titles II and III of Pub. L. 93-501 [which had enacted sections 371b-1, 1730e, and 1831a of this title, amended sections 85, 1425b, and 1828 of this title, and section 687 of Title 15, Commerce and Trade, and enacted provisions set out as notes under sections 371b-1 and 1831a of this title], the amendments which had been made by title II of that Act and the provisions of such title would continue to apply to any loan made in any State during the period specified in section 206 of such Act [set out as a note under section 1831a of this title] and that the amendments which had been made by title III of such Act would continue to apply to any deposit made or obligation issued in any State during the period specified in section 304 of such Act [set out as a note under section 371b-1 of this title].

STATES HAVING CONSTITUTIONAL PROVISIONS REGARDING MAXIMUM INTEREST RATES

The provisions of title II of Pub. L. 96-161, which amended this section, repealed provisions which had formerly amended this section, and enacted provisions set out as notes under this section, to continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates, see section 213 of Pub. L. 96-161, set out as a note under section 86a of this title.

§ 86a. Rates of interest for financial institutions chartered pursuant to statutes of the United States

(a) Business or agricultural loans of $25,000 or more

In order to prevent discrimination against any financial institution chartered pursuant to the statutes of the United States with respect to interest rates, if the applicable rate prescribed in this section exceeds the rate such federally chartered financial institution would be permitted to charge in the absence of this section, the federally chartered financial institution may in the case of business or agricultural loans in the amount of $25,000 or more, notwithstanding any State constitution or statute, which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan, interest at a rate of not more than 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the federally chartered financial institution is located.

(b) Forfeiture of excessive interest; recovery

If the rate prescribed in subsection (a) of this section exceeds the rate such federally chartered financial institution would be permitted to charge in the absence of this section, and such State fixed rate is thereby preempted by the rate described in subsection (a) of this section, the taking, receiving, reserving, or charging a greater rate than is allowed by subsection (a) of this section, when knowingly done, shall be deemed a forfeiture of the entire interest which the loan carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of interest paid from the federally chartered financial institution taking or receiving such interest.

(Pub. L. 96-161, title II, § 205, Dec. 28, 1979, 93 Stat. 1237.)

PRIOR PROVISIONS

A prior section 86a, Pub. L. 96-104, title I, § 105, Nov. 5, 1979, 93 Stat. 791, identical to this section as enacted by Pub. L. 96-161, was repealed by section 212 of Pub. L. 96-161, effective at the close of Dec. 27, 1979, except that its provisions would continue to apply to loans made in any State on or after Nov. 5, 1979, but prior to such repeal. For the effective date provisions relating to the prior section 86a as contained in section 107 of Pub. L. 96-104, see Effective Date of 1979 Amendments note set out under section 1831a of this title.

Section 301 of Pub. L. 96-104, which limited the applicability of Pub. L. 96-104 to those States having a constitutional provision that all contracts for a greater rate of interest than 10 per centum per annum are void as to both principal and interest, was repealed by section 212 of Pub. L. 96-161, effective at the close of Dec. 27, 1979.

EFFECTIVE DATE

Section applicable to loans made in any State during the period beginning on Dec. 28, 1979, and ending on the earliest of (1) in the case of a State statute, July 1, 1980; (2) the date, after Dec. 28, 1979, on which such State adopts a law stating in substance that such State does not want this section to apply with respect to loans made in such State; or (3) the date on which such State certifies that the voters of such State, after Dec. 28, 1979, have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment to the constitution of such State which prohibits the charging of interest at the rates provided in this section, see section 207 of Pub. L. 96-161, set out as an Effective Date of 1979 Amendments note under section 1831a of this title.

STATES HAVING CONSTITUTIONAL PROVISIONS REGARDING MAXIMUM INTEREST RATES

Section 213 of Pub. L. 96-161 provided that: "Notwithstanding any other provision of this title, subject to sections 207 (2) and (3) [set out as a note under section 1831a of this title] and 211 (2) and (3) of this Act [set out as a note under section 371b-1 of this title] and section 308(h)(3) (B) and (C) of the Small Business Investment Act of 1958 [section 687(h)(3) (B) and (C) of Title 15, Commerce and Trade], the provisions of this title [enacting sections 86a, 371b-1, 1730e, and 1831a of this title, amending sections 85, 1425b, and 1828 of this title and section 687 of Title 15, repealing former sections 86a, 371b-1, 1730e, and 1831a of this title and notes formerly set out under this section and sections 371b-1 and 1831a of this title, and enacting provisions set out as notes under sections 85, 371b-1, and 1831a of this title] shall continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates."

§ 90. Depositaries of public moneys and financial agents of Government

[*See main edition for text of first and second undesignated pars.*]

Any national banking association may, upon the deposit with it of any funds by any federally recognized Indian tribe, or any officer, employee, or agent thereof in his or her official capacity, give security for the safekeeping and prompt payment of the funds so deposited by the deposit of United States bonds and otherwise as may be prescribed by the Secretary of the Treasury for public funds under the first paragraph of this section.

(As amended Dec. 21, 1979, Pub. L. 96-153, title III, § 323(f), 93 Stat. 1120.)

AMENDMENTS

1979—Pub. L. 96-153 added paragraph beginning "Any national banking association may, upon the deposit with it of any funds by any federally recognized Indian".

§ 93. Violations of provisions of chapter; forfeiture of franchise; personal liability of directors; civil money penalty

(a) If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this chapter, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper district or Territorial court of the United States in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation.

(b)(1) Any national banking association which violates, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such association who violates any of the provisions of this chapter, or any regulation issued pursuant thereto, shall forfeit and pay a civil money penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Comptroller of the Currency by written notice. As used in the section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(2) In determining the amount of the penalty the Comptroller shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the

association or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) The association or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in paragraph (4). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(4) Any association or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the bank is located, or in the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Comptroller. The Comptroller shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28. The findings of the Comptroller shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(e) of title 5.

(5) If any association or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Comptroller shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(6) The Comptroller may, in his discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under this section.

(7) The Comptroller shall promulgate regulations establishing procedures necessary to implement this subsection.

(8) All penalties collected under authority of this section shall be covered into the Treasury of the United States.

(As amended Nov. 10, 1978, Pub. L. 95-630, title I, § 103, 92 Stat. 3643.)

AMENDMENTS

1978—Pub. L. 95-630 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 109 of Pub. L. 95-630 provided that: "Any amendment made by this title which provides for the imposition of civil penalties [enacting sections 504 and 505 of this title and amending sections 93, 1464(d)(8), 1730(k)(3), 1730a(j)(4), 1786(j)(2), 1818(i)(2), 1828(j)(3), and 1847 of this title] shall apply only to violations occurring or continuing after the date of its enactment [Nov. 10, 1978]."

§ 95a. Regulation of transactions in foreign exchange of gold and silver; property transfers; vested interests, enforcement and penalties

(1) During the time of war, the President may, through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

[*See main edition for text of* (A) *and* (B)]

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

[*See main edition for text of* (2)]

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof; *Provided, however,* That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

(As amended Dec. 28, 1977, Pub. L. 95-223, title I, §§ 101(a), 102, 103(b), 91 Stat. 1625, 1626.)

AMENDMENTS

1977—Par. (1). Pub. L. 95-223; §§ 101(a), 102, substituted "During the time of war, the President may, through any agency that he may designate, and under such rules and regulations" for "During the time of war or during any other period of national emergency declared by the President, the President may, through any agency, that he may designate, or otherwise, and under such rules and regulations" in the provisions

preceding subpar. (A), and, in the provisions following subpar. (B), struck out "; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of the subdivision" following "control of such person".

Par. (3). Pub. L. 95-22, § 103(b), struck out provisions that whoever willfully violated any of the provisions of this subdivision or of any license, order, rule, or regulation issued thereunder, could be fined not more than $10,000, or, if a natural person, could be imprisoned for not more than ten years, or both; and that any officer, director, or agent of any corporation who knowingly participated in that violation could be punished by a like fine, imprisonment, or both.

EXTENSION AND TERMINATION OF NATIONAL EMERGENCY POWERS UNDER THE TRADING WITH THE ENEMY ACT

Section 101 (b) and (c) of Pub. L. 95-223 provided that:

"(b) Notwithstanding the amendment made by subsection (a) [amending par. (1) of this section], the authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act [this section], which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, may continue to be exercised with respect to such country, except that, unless extended, the exercise of such authorities shall terminate (subject to the savings provisions of the second sentence of section 101(a) of the National Emergencies Act [section 1601(a) of Title 50, Appendix]) at the end of the two-year period beginning on the date of enactment of the National Emergencies Act [Sept 14, 1976]. The President may extend the exercise of such authorities for one-year periods upon a determination for each such extension that the exercise of such authorities with respect to such country for another year is in the national interest of the United States.

"(c) The termination and extension provisions of subsection (b) of this section supersede the provisions of section 101(a) [section 1601(a) of Title 50, Appendix] and of title II [section 1621 et seq. of Title 50, Appendix] of the National Emergencies Act to the extent that the provisions of subsection (b) of this section are inconsistent with those provisions."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 95b, 212, 3409, 3413 of this title; title 31 sections 824, 1141.

§ 95b. Ratification of acts of President and Secretary of Treasury under section 95a

CODIFICATION

This section is also set out as a note under section 5 of Title 50, Appendix.

CROSS REFERENCES

Right to amend, separability of provisions and ratification of acts done under this section, see section 212 of this title and section 824 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 212 of this title; title 31 section 824.

SUBCHAPTER VIII—RESERVE CITIES; LAWFUL RESERVES

§ 142. Banks in reserve cities; reserves

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 505, 1424, 1828 of this title.

SUBCHAPTER XIV—BANK CONSERVATION ACT

§ 209. Conservators subject to certain sections of title 18

REFERENCES IN TEXT

Section 281 of title 18, referred to in text, was repealed by Pub. L. 87-849, § 2, Oct. 21, 1962, 76 Stat. 1126, except as section 281 may apply to retired officers of the armed forces, and was supplanted by section 203 of Title 18, Crimes and Criminal Procedure. For further details, see Exemptions note set out under section 281 of Title 18.

CHAPTER 3—FEDERAL RESERVE SYSTEM

SUBCHAPTER I—DEFINITIONS, ORGANIZATION, AND GENERAL PROVISIONS AFFECTING SYSTEM

Sec.
225a. Maintenance of long run growth of monetary and credit aggregates; annual reports to Congress; transmittal to Congressional Committees; consultations with Committees; report of Committee; changing conditions affecting achievement of objectives and plans; explanation for deviations from objectives and plans [New].

SUBCHAPTER V—FEDERAL DEPOSIT INSURANCE CORPORATION

266. State-chartered banks and other institutions as depositaries of public money; fiscal agents; duties [New].

SUBCHAPTER IX—POWERS AND DUTIES OF FEDERAL RESERVE BANKS

347d. Transactions between Federal Reserve banks and branch or agency of foreign bank; matters considered [New].
359a. Authority of Secretary of the Treasury to borrow and sell in open market, repurchase and return of obligations to Federal Reserve banks [New].

SUBCHAPTER X—POWERS AND DUTIES OF MEMBER BANKS

375b. Prohibitions respecting loans and extensions of credit to executive officers and directors of banks, political or campaign committees, etc. [New].

SUBCHAPTER XVI—CIVIL LIABILITY OF FEDERAL RESERVE AND MEMBER BANKS, SHAREHOLDERS, AND OFFICERS

504. Civil penalty [New].
(a) Making loans, extensions of credit, purchases of securities, etc., respecting affiliates, executive officers, etc.
(b) Amount of penalty.
(c) Opportunity for hearing.
(d) Review by United States court of appeals.
(e) Action by Attorney General for failure to pay assessment.
(f) Promulgation of regulations.
(g) Penalties covered into Treasury of United States.
505. Civil penalty respecting depository, reserve, etc., requirements; amount; hearing; review; action by Attorney General; regulations [New].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 35, 82, 1440, 1813, 1817, 2254, 3108 of this title; title 31 section 754.

SUBCHAPTER I—DEFINITIONS, ORGANIZATION, AND GENERAL PROVISIONS AFFECTING SYSTEM

§ 221. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 221a, 3102, 3105 of this title.

§ 225a. Maintenance of long run growth of monetary and credit aggregates; annual reports to Congress; transmittal to Congressional Committees; consultations with Committees; report of Committee; changing conditions affecting achievement of objectives and plans; explanation for deviations from objectives and plans

The Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates. In furtherance of the purposes of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.], the Board of Governors of the Federal Reserve System shall transmit to the Congress, not later than February 20 and July 20 of each year, independent written reports setting forth (1) a review and analysis of recent developments affecting economic trends in the Nation; (2) the objectives and plans of the Board of Governors and the Federal Open Market Committee with respect to the ranges of growth or diminution of the monetary and credit aggregates for the calendar year during which the report is transmitted, taking account of past and prospective developments in employment, unemployment, production, investment, real income, productivity, international trade and payments, and prices; and (3) the relationship of the aforesaid objectives and plans to the short-term goals set forth in the most recent Economic Report of the President pursuant to section 1022(a)(2)(A) of title 15 and to any short-term goals approved by the Congress. In addition, as a part of its report on July 20 of each year, the Board of Governors shall include a statement of its objectives and plans with respect to the ranges of growth or diminution of the monetary and credit aggregates for the calendar year following the year in which the report is submitted. The reports required under the two preceding sentences shall be transmitted to the Congress and shall be referred in the Senate to the Committee on Banking, Housing, and Urban Affairs, and in the House of Representatives to the Committee on Banking, Finance and Urban Affairs. The Board shall consult with each such Committee on the reports and, thereafter, each such Committee shall submit to its respective body a report containing its views and recommendations with respect to the Federal Reserve's intended policies. Nothing in this chapter shall be interpreted to require that the objectives and plans with respect to the ranges of growth or diminution of the monetary and credit aggregates disclosed in the reports submitted under this section be achieved if the Board of Governors and the Federal Open Market Committee determine that they cannot or should not be achieved because of changing conditions: *Provided*, That in the subsequent consultations with, and reports to, the aforesaid Committees of the Congress pursuant to this section, the Board of Governors shall include an explanation of the reasons for any revisions to or deviations from such objectives and plans.

(Dec. 23, 1913, ch. 6, § 2A, as added Nov. 16, 1977, Pub. L. 95-188, title II, § 202, 91 Stat. 1387, and amended Oct. 27, 1978, Pub. L. 95-523, title I, § 108(a), 92 Stat. 1897.)

REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in text, is Pub. L. 95-523, Oct. 27, 1978, 92 Stat. 1887, which is classified principally to chapter 58 (§ 3101 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 15 and Tables.

This chapter, referred to in text, was, in the original, this Act, meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, known as the Federal Reserve Act. For complete classification of this act to the Code, see Distribution note under section 226 of this title and Tables.

CODIFICATION

Another section 202 of Pub. L. 95-188 amended section 302 of this title.

AMENDMENTS

1978—Pub. L. 95-523 substituted provisions relating to the annual independent written reports of the Board of Governors to the Congress for provisions relating to the consultations of the Board of Governors with Congress at semi-annual hearings, substituted "the objectives and plans with respect to the ranges" for "such ranges", inserted "of the monetary and credit aggregates disclosed in the reports submitted under this section" following "growth or diminution", and added the proviso respecting the inclusion of an explanation of reasons for revisions or deviations in subsequent consultations and reports.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 108(b) of Pub. L. 95-523 provided that: "The amendment made by subsection (a) [amending this section] takes effect on January 1, 1979."

§ 226. "Federal Reserve Act"

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-630, § 1, Nov. 10, 1978, 92 Stat. 3641, provided: "That this Act [which enacted sections 375b, 504, 505, 635a-1 to 635a-3, 1795 to 1795i, 1831c, 3106a, 3201 to 3207, 3301 to 3308, and 3401 to 3422 of this title, sections 1693 to 1693r of Title 15, Commerce and Trade, and section 2153e-1 of Title 42, The Public Health and Welfare, amended sections 27, 93, 375a, 412, 635, 635e to 635g, 1451, 1462, 1464, 1715z-10, 1726, 1728 to 1730a, 1752 to 1756, 1757 to 1759, 1761 to 1763, 1766, 1767, 1771, 1772a, 1781 to 1789, 1795b to 1795g, 1813, 1817 to 1821, 1828, 1832, 1843, 1844, 1847, 1865, 1972, and 2902 of this title, sections 5108, 5314, and 5315 of Title 5, Government Organization and Employees, sections 709 and 1114 of Title 18, Crimes and Criminal Procedure, and sections 67 and 856 of Title 31, Money and Finance, enacted provisions set out as notes under sections 27, 93, 375b, 461, 601, 635, 1451, 1728, 1730, 1751, 1752, 1795, 1817, 1832, 3201, 3301, 3401, and 3415 of this title, and sections 1601 and 1693 of Title 15; and amended provisions set out as notes

under sections 226 and 461 of this title and section 1666f of Title 15] may be cited as the 'Financial Institutions Regulatory and Interest Rate Control Act of 1978'."

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-188, title II, § 201, Nov. 16, 1977, 91 Stat. 1387, provided that: "This title [which enacted section 225a of this title, amended sections 242 and 302 of this title and section 208 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as a note under section 242 of this title] may be cited as the 'Federal Reserve Reform Act of 1977'."

SEPARABILITY OF PROVISIONS; RIGHT TO AMEND, ALTER OR REPEAL

Sections 29 and 30 of the Federal Reserve Act were renumbered 30 and 31, respectively, by Pub. L. 95-630, title I, § 101, Nov. 10, 1978, 92 Stat. 3641.

SUBCHAPTER II—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

§ 242. Ineligibility to hold office in member banks; qualifications and terms of office of members; chairman and vice chairman; oath of office

The members of the Board shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment in any member bank, except that this restriction shall not apply to a member who has served the full term for which he was appointed. Upon the expiration of the term of any appointive member of the Federal Reserve Board in office on August 23, 1935, the President shall fix the term of the successor to such member at not to exceed fourteen years, as designated by the President at the time of nomination, but in such manner as to provide for the expiration of the term of not more than one member in any two-year period, and thereafter each member shall hold office for a term of fourteen years from the expiration of the term of his predecessor, unless sooner removed for cause by the President. Of the persons thus appointed, one shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairman of the Board for a term of four years, and one shall be designated by the President, by and with the consent of the Senate, to serve as Vice Chairman of the Board for a term of four years. The Chairman of the Board, subject to its supervision, shall be its active executive officer. Each member of the Board shall within fifteen days after notice of appointment make and subscribe to the oath of office. Upon the expiration of their terms of office, members of the Board shall continue to serve until their successors are appointed and have qualified. Any person appointed as a member of the Board after August 23, 1935, shall not be eligible for reappointment as such member after he shall have served a full term of fourteen years.

(As amended Nov. 16, 1977, Pub. L. 95-188, title II, § 204(a), 91 Stat. 1388.)

AMENDMENTS

1977—Pub. L. 95-188 substituted in third sentence "one shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairman of the Board for a term of four years, and one shall be designated by the President, by and with the consent of the Senate, to serve as Vice Chairman of the Board for a term of four years" for "one shall be designated by the President as chairman and one as vice chairman of the Board, to serve as such for a term of four years".

EFFECTIVE DATE OF 1977 AMENDMENT; APPLICABILITY

Section 204(b) of Pub. L. 95-188 provided that: "The amendment made by subsection (a) [to the third sentence of this section] takes effect on January 1, 1979, and applies to individuals who are designated by the President on or after such date to serve as Chairman or Vice Chairman of the Board of Governors of the Federal Reserve System".

§ 247. Reports to Congress

MEMBERSHIP OF INTERNATIONAL BANKS IN FEDERAL RESERVE SYSTEM; REPORT TO CONGRESS

Pub. L. 95-369, § 3(g), Sept. 17, 1978, 92 Stat. 610, provided that: "The Board shall report to the Congress not later than 270 days after the date of enactment of this Act [Sept. 17, 1978] its recommendations with respect to permitting corporations organized or operating under section 25 or 25(a) of the Federal Reserve Act [sections 601 to 604 and 611 to 631 of this title], to become members of Federal Reserve Banks."

EFFECT OF INTERNATIONAL BANKING ACT OF 1978 ON INTERNATIONAL BANKS; REPORT TO CONGRESS

Pub. L. 95-369, § 3(h), Sept. 17, 1978, 92 Stat. 610, provided that: "As part of its annual report pursuant to section 10 of the Federal Reserve Act [this section], the Board shall include its assessment of the effects of the amendments made by this Act [see Short Title note set out under section 3101 of this title] on the capitalization and activities of corporations organized or operating under section 25 or 25(a) of the Federal Reserve Act [sections 601 to 604 and 611 to 631 of this title], and on commercial banks and the banking system."

§ 248. Enumerated powers

The Board of Governors of the Federal Reserve System shall be authorized and empowered:

[See main edition for text of (a) to (j)]

(k) Delegation of certain functions; power to delegate; review of delegated activities

To delegate, by published order or rule and subject to subchapter II of chapter 5, and chapter 7, of title 5, any of its functions, other than those relating to rulemaking or pertaining principally to monetary and credit policies, to one or more administrative law judges, members or employees of the Board, or Federal Reserve banks. The assignment of responsibility for the performance of any function that the Board determines to delegate shall be a function of the Chairman. The Board shall, upon the vote of one member, review action taken at a delegated level within such time and in such manner as the Board shall by rule prescribe.

[See main edition for text of (l) to (o)]

(As amended Mar. 27, 1978, Pub. L. 95-251, § 2(a)(3), 92 Stat. 183.)

AMENDMENTS

1978—Subsec. (k). Pub. L. 95-251 substituted "administrative law judges" for "hearing examiners".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 212, 348, 467, 501, 3105 of this title; title 5 section 5373; title 31 section 824.

SUBCHAPTER V—FEDERAL DEPOSIT INSURANCE CORPORATION

§ 265. Insured banks as depositaries of public money; duties; security; discrimination between banks prohibited; repeal of inconsistent laws

CODIFICATION

Section was formerly classified to section 1110 of Title 50, Appendix, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 1654.

§ 266. State-chartered banks and other institutions as depositaries of public money; fiscal agents; duties

Banks, savings banks, and savings and loan, building and loan, homestead associations (including cooperative banks), and credit unions created under the laws of any State and the deposits or accounts of which are insured by a State or agency thereof or corporation chartered pursuant to the laws of any State may be depositaries of public money and may be employed as fiscal agents of the United States. The Secretary of the Treasury is authorized to deposit public money in any such institution, and shall prescribe such regulations as may be necessary to enable such institutions to become depositaries of public money and fiscal agents of the United States. Each such institution shall perform all such reasonable duties as depositary of public money and fiscal agent of the United States as may be required of it including services in connection with the collection of taxes and other obligations owed the United States.

(Pub. L. 95-147, § 2(d), Oct. 28, 1977, 91 Stat. 1228.)

CODIFICATION

Section was not enacted as part of act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act, which comprises this chapter.

SUBCHAPTER VII—DIRECTORS OF FEDERAL RESERVE BANKS; RESERVE AGENTS AND ASSISTANTS

§ 302. Number of members; classes

Such board of directors shall be selected as hereinafter specified and shall consist of nine members, holding office for three years, and divided into three classes, designated as classes A, B, and C.

Class A shall consist of three members, without discrimination on the basis of race, creed, color, sex, or national origin, who shall be chosen by and be representative of the stockholding banks.

Class B shall consist of three members, who shall represent the public and shall be elected without discrimination on the basis of race, creed, color, sex, or national origin, and with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers.

Class C shall consist of three members who shall be designated by the Board of Governors of the Federal Reserve System. They shall be elected to represent the public, without discrimination on the basis of race, creed, color, sex, or national origin, and with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers.

(As amended Nov. 16, 1977, Pub. L. 95-188, title II, § 202, 91 Stat. 1387.)

CODIFICATION

Another section 202 of Pub. L. 95-188 enacted section 225a of this title.

AMENDMENTS

1977—Second par. Pub. L. 95-188, § 202(a), required Class A members to be chosen without discrimination on the basis of race, creed, color, sex or national origin.

Third par. Pub. L. 95-188, § 202(b), substituted requirement that Class B members represent the public and be elected without discrimination on the basis of race, creed, color, sex, or national origin, and with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers for prior requirement that such Class B members, at the time of their election, be actively engaged in their district in commerce, agriculture or some other industrial pursuit.

Fourth par. Pub. L. 95-188, § 202(c), required Class C members to be elected to represent the public, without discrimination on the basis of race, creed, color, sex, or national origin, and with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers.

SUBCHAPTER VIII—STATE BANKS AS MEMBERS OF SYSTEM

§ 324. Laws applicable on becoming members

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3105 of this title.

§ 335. Dealing in investment securities; limitations and conditions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3105 of this title.

SUBCHAPTER IX—POWERS AND DUTIES OF FEDERAL RESERVE BANKS

§ 347d. Transactions between Federal Reserve banks and branch or agency of foreign bank; matters considered

Subject to such restrictions, limitations, and regulations as may be imposed by the Board of Governors of the Federal Reserve System, each Federal Reserve bank may receive deposits from, discount paper endorsed by, and make advances to any branch or agency of a foreign bank in the same manner and to the same extent that it may exercise such powers with respect to a member bank if such branch or agency is maintaining reserves with such Reserve bank pursuant to section 3105 of this title. In exercising any such powers with respect to any such branch or agency, each Federal Reserve bank shall give due regard to ac-

count balances being maintained by such branch or agency with such Reserve bank and the proportion of the assets of such branch or agency being held as reserves under section 3105 of this title. For the purposes of this paragraph, the terms "branch", "agency", and "foreign bank" shall have the same meanings assigned to them in section 3101 of this title.

(Dec. 23, 1913, ch. 6, § 13 (par.), as added Sept. 17, 1978, Pub. L. 95-369, § 7(b), 92 Stat. 621.)

CODIFICATION

Section 7 of Pub. L. 95-369 consisted of subsecs. (a) to (d). Subsecs. (a), (c), and (d) of section 7 of Pub. L. 95-369 were classified to section 3105 of this title, and subsec. (b) of section 7 of Pub. L. 95-369 was classified to this section.

PRIOR PROVISIONS

A prior section 347d, act Mar. 9, 1933, ch. 1, § 404, as added Mar. 24, 1933, ch. 8, § 1, 48 Stat. 20, which related to direct loans to state banks and trust companies, was omitted from the Code as terminated since by its own terms, it was effective for only one year following date of its enactment, Mar. 24, 1933.

§ 355. Purchase and sale of obligations of National, State, and municipal governments; open market operations; purchases and sales from or to United States; maximum aggregate amount of obligations acquired directly from or loaned directly to United States

Every Federal Reserve bank shall have power:

(1) To buy and sell, at home or abroad, bonds and notes of the United States, bonds issued under the provisions of subsection (c) of section 1463 of this title and having maturities from date of purchase of not exceeding six months, and bills, notes, revenue bonds, and warrants with a maturity from date of purchase of not exceeding six months, issued in anticipation of the collection of taxes or in anticipation of the receipt of assured revenues by any State, county, district, political subdivision, or municipality in the continental United States, including irrigation, drainage and reclamation districts, such purchases to be made in accordance with rules and regulations prescribed by the Board of Governors of the Federal Reserve System.

(2) To buy and sell in the open market, under the direction and regulations of the Federal Open Market Committee, any obligation which is a direct obligation of, or fully guaranteed as to principal and interest by, the United States or any agency of the United States, and to lend, under the direction and regulations of the Federal Open Market Committee, any such obligation to the Secretary of the Treasury.

(3) In unusual and exigent circumstances and when authorized, for renewable periods not to exceed thirty days, by the Board of Governors of the Federal Reserve System pursuant to an affirmative vote of not less than five members, to buy and sell, without regard to maturities, directly from or to the United States any bonds, notes, or other obligations which are direct obligations of the United States or which are fully guaranteed by the United States as to principal and interest. Such purchases and sales shall be made in accordance with the provisions of section 263 of this title. The Board of Governors of the Federal Reserve System shall include in their annual report to Congress detailed information with respect to direct purchases and sales from or to the United States under the provisions of this paragraph.

(4) The aggregate amount of obligations acquired directly from the United States or loaned directly to the United States under the authority of this section which is held or loaned at any one time by the twelve Federal Reserve banks shall not exceed $5,000,000,000.

(As amended Apr. 19, 1977, Pub. L. 95-22, title II, § 201, 91 Stat. 49; Oct. 12, 1977, Pub. L. 95-128, title II, § 209, 91 Stat. 1131; Nov. 7, 1977, Pub. L. 95-154, 91 Stat. 1256; Oct. 27, 1978, Pub. L. 95-534, 92 Stat. 2032; June 8, 1979, Pub. L. 96-18, § 1, 93 Stat. 35.)

AMENDMENT OF PAR. (1) EFFECTIVE UPON EXPIRATION OF TWO-YEAR PERIOD BEGINNING ON JUNE 8, 1979

Section 3(b) of Pub. L. 96-18 provided that, upon the expiration of the two-year period which begins on the date of enactment of Pub. L. 96-18 [June 8, 1979], section 14(b)(1) of the Federal Reserve Act [par. (1) of this section] is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of this chapter, any bonds, notes, or other obligations which are direct obligations of the United States or which are fully guaranteed by the United States as to principal and interest may be bought and sold without regard to maturities but only in the open market."

AMENDMENTS

1979—Par. (1). Pub. L. 96-18, § 1(a), struck out proviso under which Federal Reserve banks had been allowed, until May 1, 1979, to buy and sell either in the open market or directly from or to the United States bonds, notes, or other obligations which were direct obligations of the United States or which were fully guaranteed by the United States and, after Apr. 30, 1979, had allowed such obligations to be purchased but only in the open market.

Par. (2). Pub. L. 96-18, § 1(b), substituted "the United States or any agency of the United States, and to lend, under the direction and regulations of the Federal Open Market Committee, any such obligation to the Secretary of the Treasury" for "any agency of the United States".

Pars. (3), (4). Pub. L. 96-18, § 1(c), added pars. (3) and (4).

1978—Par. (1). Pub. L. 95-534 substituted "May 1, 1979" for "May 1, 1978" and "April 30, 1979" for "April 30, 1978".

1977—Par. (1). Pub. L. 95-154 substituted "May 1, 1978" for "October 1, 1977" and "April 30, 1978" for "September 30, 1977".

Pub. L. 95-128 substituted "October 1, 1977" for "November 1, 1978" and "September 30, 1977" for "October 31, 1978".

Pub. L. 95-22 substituted "November 1, 1978" for "November 1, 1976" and "October 31, 1978" for "October 31, 1976".

EFFECTIVE AND TERMINATION DATES OF 1979 AMENDMENT

Section 3(a) of Pub. L. 96-18 provided that: "Except for the amendments made by subsection (a) of the first section of this Act [amending par. (1) of this section], and except for the amendment made by subsection (b) of this section [amending par. (1) of this section effective upon the expiration of the two-year period beginning on June 8, 1979], the amendments

made by this Act [enacting section 359a of this title and pars. (3) and (4) of this section and amending par. (2) of this section] shall be effective only during the two-year period which begins on the date of enactment of this Act [June 8, 1979]. Upon the expiration of such period, each provision of law amended by this Act [enacting section 359a of this title and amending this section], except section 14(b)(1) of the Federal Reserve Act [par. (1) of this section], is amended to read as it did immediately prior to the enactment of this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263, 347, 359a, 412, 2158 of this title; title 20 section 1087–2.

§ 359a. Authority of Secretary of the Treasury to borrow and sell in open market, repurchase and return of obligations to Federal Reserve banks

The Secretary of the Treasury shall have the authority to borrow, subject to the approval and rules and regulations of the Federal Open Market Committee, any obligation referred to in section 355(2) and (3) of this title from any Federal Reserve bank and to sell any such obligation in the open market for the purpose of meeting the short-term cash needs of the Treasury. Not later than six months after the date of sale of such an obligation, the Secretary of the Treasury shall repurchase such obligation and return such obligation to the Federal Reserve bank from which such obligation was borrowed. The aggregate of the face amount of obligations borrowed under the authority of this section shall be included, during the period of such borrowing, as part of the public debt subject to the limitation imposed by section 757b of title 31.

(Dec. 23, 1913, ch. 6, § 14(h), as added June 8, 1979, Pub. L. 96–18, § 2, 93 Stat. 35.)

EFFECTIVE AND TERMINATION DATE

Section effective only during the two-year period which begins on June 8, 1979, see section 3(a) of Pub. L. 96–18, set out as an Effective and Termination Dates of 1979 Amendment note under section 355 of this title.

SUBCHAPTER X—POWERS AND DUTIES OF MEMBER BANKS

§ 371a. Payment of interest on demand deposits

No member bank shall, directly or indirectly, by any device whatsoever, pay any interest on any deposit which is payable on demand: *Provided*, that nothing herein contained shall be construed as prohibiting the payment of interest in accordance with the terms of any certificate of deposit or other contract entered into in good faith which is in force on the date on which the bank becomes subject to the provisions of this section; but no such certificate of deposit or other contract shall be renewed or extended unless it shall be modified to conform to this section, and every member bank shall take such action as may be necessary to conform to this section as soon as possible consistently with its contractual obligations: *Provided further*, That this section shall not apply to any deposit of such bank which is payable only at an office thereof located outside of the States of the United States and the District of Columbia: *Provided further*, That until the expiration of two years after August 23, 1935, this section shall not apply (1) to any deposit made by a savings bank as defined in section 12B of this Act, as amended, or by a mutual savings bank, or (2) to any deposit of public funds made by or on behalf of any State, county, school district, or other subdivision or municipality, or to any deposit of trust funds if the payment of interest with respect to such deposit of public funds or of trust funds is required by State law. So much of existing law as requires the payment of interest with respect to any funds deposited by the United States, by any Territory, District, or possession thereof, or by any public instrumentality, agency, or officer of the foregoing, as is inconsistent with the provisions of this section is repealed. Notwithstanding any other provision of this section, a member bank may permit withdrawals to be made automatically from a savings deposit that consists only of funds in which the entire beneficial interest is held by one or more individuals through payment to the bank itself or through transfer of credit to a demand deposit or other account pursuant to writen authorization from the depositor to make such payments or transfers in connection with checks or drafts drawn upon the bank, pursuant to terms and conditions prescribed by the Board.

(As amended Dec. 28, 1979, Pub. L. 96–161, title I, § 101(a), 93 Stat. 1233.)

REFERENCES IN TEXT

This section, referred to in the last sentence, means section 19 of act Dec. 23, 1913, as amended, which is classified to sections 142, 371a, 371b, 371b–1, 374, 374a, 461, 463 to 466, and 505 of this title.

AMENDMENTS

1979—Pub. L. 96–161 added provision allowing member banks to permit withdrawals to be made automatically from a savings deposit that consists only of funds in which the entire beneficial interest is held by one or more individuals through payment to the bank itself or through transfer of credit to a demand deposit or other account pursuant to written authorization from the depositor to make such payments or transfers in connection with checks or drafts drawn upon the bank, pursuant to terms and conditions prescribed by the Board.

EFFECTIVE AND TERMINATION DATES OF 1979 AMENDMENT

Section 104 of Pub. L. 96–161 provided that: "The amendments made by sections 101 through 103 of this title [amending sections 371a, 1464, 1752, 1757, and 1828 of this title] shall take effect on December 31, 1979, and shall remain in effect until the close of March 31, 1980."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 505, 1424, 1828, 3105 of this title.

§ 371b. Rate of interest on time deposits; payment of time deposits before maturity; waiver of notice requirements for withdrawal of savings deposits

CODIFICATION

Another section 19(j) of the Federal Reserve Act, act Dec. 23, 1913, ch. 6, 38 Stat. 251, is set out as section 505 of this title.

EFFECTIVE AND TERMINATION DATES OF 1966 AMENDMENT

Amendment of provisions of this section preceding the third sentence thereof by Pub. L. 89-597, effective only through December 15, 1980, and, effective December 15, 1980, such provisions further amended to read as they would without the amendment made by section 2(c) of Pub. L. 89-597, see section 7(1) of Pub. L. 89-597, as amended, set out as an Effective and Termination Dates of 1966 Amendment note under section 461 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 505, 1424, 1828, 3105 of this title.

§ 371b-1. State usury ceilings inapplicable to certain obligations issued by member banks and affiliates

No member bank or affiliate thereof, or any successor or assignee of such member bank or affiliate or any endorser, guarantor, or surety of such member bank or affiliate may plead, raise, or claim directly or by counterclaim, setoff, or otherwise, with respect to any deposit or obligation of such member bank or affiliate, any defense, right, or benefit under any provision of a statute or constitution of a State or of a territory of the United States, or of any law of the District of Columbia, regulating or limiting the rate of interest which may be charged, taken, received, or reserved, and any such provision is hereby preempted, and no civil or criminal penalty which would otherwise be applicable under such provision shall apply to such member bank or affiliate or to any other person.

(Dec. 23, 1913, ch. 6, § 19(k), as added Dec. 28, 1979, Pub. L. 96-161, title II, § 208, 93 Stat. 1238.)

PRIOR PROVISIONS

A prior section 371b-1, act Dec. 23, 1913, ch. 6, § 19(k), as added Nov. 5, 1979, Pub. L. 96-104, title II, § 201, 93 Stat. 792, identical to this section as added by Pub. L. 96-161, was repealed by section 212 of Pub. L. 96-161, effective at the close of Dec. 27, 1979, except that its provisions would continue to apply to deposits made or obligations issued in any State on or after Nov. 5, 1979, but prior to such repeal. See Effective Date of 1979 Amendments note set out below.

A prior section 371b-1, Act Dec. 23, 1913, ch. 6, § 19(k), as added Oct. 29, 1974, Pub. L. 93-501, title III, § 301, 88 Stat. 1560, identical to this section as added by Pub. L. 96-104, was repealed by section 1 of Pub. L. 96-104 except that its provisions shall continue to apply to any deposit made or obligation issued in any State during the period specified in section 304 of Pub. L. 93-501. See Effective and Termination Date of 1974 Amendment note set out below.

EFFECTIVE DATE OF 1979 AMENDMENTS

Section 211 of Pub. L. 96-161 provided that:

"The amendments made by sections 208, 209, and 210 of this title [enacting this section and amending sections 1425b and 1828 of this title] shall apply only with respect to deposits made or obligations issued in any State during the period beginning on the date of the enactment of this Act [Dec. 28, 1979] and ending on the earliest of—

"(1) in the case of a State statute, July 1, 1980;

"(2) the date, after the date of the enactment of this Act [Dec. 28, 1979], on which such State adopts a law stating in substance that such State does not want the amendments made by sections 208, 209, and 210 of this title to apply with respect to such deposits and obligations; or

"(3) the date on which such State certifies that the voters of such State, after the date of the enactment of this Act [Dec. 28, 1979], have voted in favor of, or to retain, any law, provision of the constitution of such state, or amendment to the constitution of such State which limits the amount of interest which may be charged in connection with such deposits and obligations."

Prior to its repeal by section 212 of Pub. L. 96-161, section 204 of Pub. L. 96-104 provided that:

"The amendments made by this title [enacting this section and amending sections 1425b and 1828 of this title] shall apply only with respect to deposits made or obligations issued in any State during the period beginning on the date of the enactment of this Act [Nov. 5, 1979] and ending on the earlier of—

"(1) July 1, 1981;

"(2) the date, after the date of the enactment of this Act, [Nov. 5, 1979], on which such State adopts a law stating in substance that such State does not want the amendments made by this title to apply with respect to such deposits and obligations; or

"(3) the date on which such State certifies that the voters of such State, after the date of the enactment of this act [Nov. 5, 1979], have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment to the constitution of such State which limits the amount of interest which may be charged in connection with such deposits and obligations."

EFFECTIVE AND TERMINATION DATES OF 1974 AMENDMENT

Prior to its repeal by section 1 of Pub. L. 96-104, section 304 of title III of Pub. L. 93-501 provided that: "The amendments made by this title [which enacted this section and amended sections 1425b and 1828 of this title] shall apply to any deposit made or obligation issued in any State after the date of enactment of this title [Oct. 29, 1974], but prior to the earlier of (1) July 1, 1977 or (2) the date (after such date of enactment) on which the State enacts a provision of law which limits the amount of interest which may be charged in connection with deposits or obligations referred to in the amendments made by this title."

STATES HAVING CONSTITUTIONAL PROVISIONS REGARDING MAXIMUM INTEREST RATES

The provisions of title II of Pub. L. 96-161, which enacted this section, repealed former section 371b-1 of this title, and enacted provisions set out as a note under this section, to continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates, see section 213 of Pub. L. 96-161, set out as a note under section 86a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 505, 1424, 1828, 3105 of this title.

§ 371c. Loans to or purchase of securities of affiliates; collateral acceptable; extension of credit; "affiliate" defined; exemptions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 375b, 504, 601, 1820, 1828, 1841, 1972 of this title.

§ 374. Acting as agent for nonmember bank in getting discounts from reserve bank

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 505, 1424, 1828, 3105 of this title.

§ 374a. Acting as agent for nonbanking borrower in making loans on securities to dealers in stocks, bonds, etc.; penalties

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 505, 1424, 1828, 3105 of this title.

§ 375. Purchases from directors; sales to directors

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 503, 504 of this title.

§ 375a. Loans to executive officers of banks

[*See main edition for text of (1)*]

(2) Mortgage loans

With the specific prior approval of its board of directors, a member bank may make a loan not exceeding $60,000 to any executive officer of the bank if, at the time the loan is made—

(A) it is secured by a first lien on a dwelling which is expected, after the making of the loan, to be owned by the officer and used by him as his residence, and

(B) no other loan by the bank to the officer under authority of this paragraph is outstanding.

(3) Educational loans

A member bank may make extensions of credit to any executive officer of the bank, not exceeding the aggregate amount of $20,000 outstanding at any one time, to finance the education of the children of the officer.

(4) General limitation on amount of credit

A member bank may make extensions of credit not otherwise specifically authorized under this section to any executive officer of the bank, not exceeding the aggregate amount of $10,000 outstanding at any one time.

[*See main edition for text of (5) to (10)*]

(As amended Nov. 10, 1978, Pub. L. 95-630, title I, § 110, 92 Stat. 3665.)

AMENDMENTS

1978—Par. (2). Pub. L. 95-630 substituted "$60,000" for "$30,000".

Par. (3). Pub. L. 95-630 substituted "$20,000" for "$10,000".

Par. (4). Pub. L. 95-630 substituted "$10,000" for "$5,000".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective upon expiration of 120 days after Nov. 10, 1978, see sec. 2101 of Pub. L. 95-630 set out as an Effective Date note under section 375b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 375b, 503, 504, 1817, 1972 of this title.

§ 375b. Prohibitions respecting loans and extensions of credit to executive officers and directors of banks, political or campaign committees, etc.

(1) No member bank shall make any loan or extension of credit in any manner to any of its executve [1] officers, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, except in the case of such a bank located in a city, town, or village with less than thirty thousand in population, in which case such per centum shall be 18 per centum, or to any company controlled by such an executive officer or person, or to any political or campaign committee the funds or services of which will benefit such an executive officer or person or which is controlled by such an executive officer or person, where the amount of such loan or extension of credit, when aggregated with the amount of all other loans or extensions of credit then outstanding by such bank to such executive officer or person and to all companies controlled by such executive officer or person and to all political or campaign committees the funds or services of which will benefit such executive officer or person or which are controlled by such executive officer or person, would exceed the limits on loans to a single borrower established by section 84 of this title. For purposes of this paragraph, the provisions of section 84 of this title shall be deemed to apply to a State member bank as if such State member bank were a national banking association.

(2) No member bank shall make any loan or extension of credit in any manner to any of its executive officers or directors, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, or to any company controlled by such an executive officer, director, or person, or to any political or campaign committee the funds or services of which will benefit such executive, director, or person or which is controlled by such executive officer, director, or person, where the amount of such loan or extension of credit, when aggregated with the amount of all other loans or extensions of credit then outstanding by such bank to such executive officer, director, or person and to all companies controlled by such executive officer, director, or person and to all political or campaign committees the funds or services of which will benefit such executive officer, director, or person or which are controlled by such executive officer, director, or person, would exceed $25,000, unless such loan, line of credit, or extension of credit is approved in advance by a majority of the entire board of directors with the interested party abstaining from participating directly or indirectly in the voting.

(3) No member bank shall make any loan or extension of credit in any manner to any of its executive officers or directors, or to any person who directly or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, or to any company controlled by such executive officer, director, or person, or to any political or campaign committee the funds or services of which will benefit such executive officer, director, or person or which is controlled by

[1] So in original. Probably should be "executive".

such executive officer, director, or person, unless such loan or extension of credit is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(4) No member bank may pay an overdraft on an account at such bank of an executive officer or director.

(5) For purposes of this section, an executive officer, director, or person shall be considered to have control of a company if such executive officer, director, or person, directly or indirectly or acting through or in concert with one or more other persons—

(A) owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the company;

(B) controls in any manner the election of a majority of the directors of the company; or

(C) has the power to exercise a controlling influence over the management or policies of such company.

(6) For the purposes of this section—

(A) the term "person" means an individual or company;

(B) the term "company" means any corporation, partnership, business trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, any other form of business entity not specifically listed herein, or any other trust, but shall not include any insured bank or any corporation the majority of shares of which is owned by the United States or by any State;

(C) the term "extension of credit" has the same meaning assigned such term in the fourth paragraph of section 371c of this title;

(D) a person shall be deemed to be a "director" of a member bank or a "person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has power to vote more than 10 per centum of any class of voting securities of a member bank" if such person has such relationship with any bank holding company of which such member is a subsidiary, as defined by the Bank Holding Company Act (12 U.S.C. 1841), or with any other subsidiary of such bank holding company;

(E) a person shall be deemed to be an "officer" of a member bank if such person is an officer of any bank holding company of which such member bank is a subsidiary, as defined by the Bank Holding Company Act (12 U.S.C. 1841), or with any other subsidiary of such bank holding company;

(F) the term "executive officer" has the same meaning assigned such term under section 375a of this title; and

(G) the term "pay an overdraft on an account" means the payment by a member bank of an amount for an account holder in excess of the funds on deposit in the account and does not include a payment of funds by the member bank in accordance with either a written preauthorized, interest-bearing extension of credit specifying a method of repayment or a written preauthorized transfer of funds from another account of the account holder at that bank.

(7) The Board of Governors of the Federal Reserve System may prescribe such rules and regulations, including definitions of terms, as it deems necessary to effectuate the purposes and to prevent evasions of this section. The Board may further prescribe rules providing a reasonable period of time after November 10, 1978, within which the amount of outstanding loans or extensions of credit made prior to November 10, 1978, shall be reduced so as to conform to the limitations of this section.

(Dec. 23, 1913, ch. 6, § 22(h), as added Nov. 10, 1978, Pub. L. 95-630, title I, § 104, 92 Stat. 3644.)

REFERENCES IN TEXT

The Bank Holding Company Act, as amended, referred to in par. (6) (D), (E), probably means act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§ 1841 et seq.) of this title. See section 1103 of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

EFFECTIVE DATE

Section 2101 of Pub. L. 95-630 provided that: "Except as otherwise provided herein, this Act [see Short Title of 1978 Amendment note set out under section 226 of this title] shall take effect upon the expiration of one hundred and twenty days after the date of its enactment [Nov. 10, 1978]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 504, 1828 of this title.

§ 376. Rate of interest paid to directors, etc.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 503, 504 of this title.

§ 378. Dealers in securities engaging in banking business; individuals or associations engaging in banking business; examinations and reports; penalties

(a) After the expiration of one year after June 16, 1933, it shall be unlawful—

[*See main edition for text of (1)*]

(2) For any person, firm, corporation, association, business trust, or other similar organization to engage, to any extent whatever with others than his or its officers, agents or employees, in the business of receiving deposits subject to check or to repayment upon presentation of a pass book, certificate of deposit, or other evidence of debt, or upon request of the depositor, unless such person, firm, corporation, association, business trust, or other similar organization (A) shall be incorporated under, and authorized to engage in such business by, the laws of the United States or of any State, Territory, or District, and subjected, by the laws of the United States, or of the State, Territory, or District wherein located, to examination and regulation, or (B) shall be permitted by the United States, any State, territory, or district to engage in such business and shall be subject-

ed by the laws of the United States, or such State, territory, or district to examination and regulations or, (C) shall submit to periodic examination by the banking authority of the State, Territory, or District where such business is carried on and shall make and publish periodic reports of its condition, exhibiting in detail its resources and liabilities, such examination and reports to be made and published at the same times and in the same manner and under the same conditions as required by the law of such State, Territory, or District in the case of incorporated banking institutions engaged in such business in the same locality.

[*See main edition for text of* (b)]

(As amended Sept. 17, 1978, Pub. L. 95-369, § 12, 92 Stat. 624.)

AMENDMENTS

1978—Subsec. (a)(2)(B). Pub. L. 95-369 added reference to permission by the United States to engage in such business and subjection by the laws of the United States to examination and regulation.

SUBCHAPTER XII—FEDERAL RESERVE NOTES

§ 412. Application for notes; collateral required

Any Federal Reserve bank may make application to the local Federal Reserve agent for such amount of the Federal Reserve notes hereinbefore provided for as it may require. Such application shall be accompanied with a tender to the local Federal Reserve agent of collateral in amount equal to the sum of the Federal Reserve notes thus applied for and issued pursuant to such application. The collateral security thus offered shall be notes, drafts, bills of exchange, or acceptances acquired under the provisions of sections 342 to 347, 347c, and 372 of this title, or bills of exchange endorsed by a member bank of any Federal Reserve district and purchased under the provisions of sections 348a and 353 to 359 of this title, or bankers' acceptances purchased under the provisions of said sections 348a and 353 to 359 of this title, or gold certificates, or Special Drawing Right certificates, or any obligations which are direct obligations of, or are fully guaranteed as to principal and interest by, the United States or any agency thereof. In no event shall such collateral security be less than the amount of Federal Reserve notes applied for. The Federal Reserve agent shall each day notify the Board of Governors of the Federal Reserve System of all issues and withdrawals of Federal Reserve notes to and by the Federal Reserve bank to which he is accredited. The said Board of Governors of the Federal Reserve System may at any time call upon a Federal Reserve bank for additional security to protect the Federal Reserve notes issued to it.

(As amended Nov. 10, 1978, Pub. L. 95-630, title I, § 113, 92 Stat. 3671.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "any obligations which are direct obligations of, or are fully guaranteed as to principal and interest by, the United States or any agency thereof" of "direct obligations of the United States".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective upon expiration of 120 days after Nov. 10, 1978, see sec. 2101 of Pub. L. 95-630 set out as an Effective Date note under section 375b of this title.

SUBCHAPTER XIV—BANK RESERVES

§ 461. Definitions, payment of interest, and regulations; reserves against deposits; form of reserves

EFFECTIVE AND TERMINATION DATES OF 1966 AMENDMENT

Section 7 of Pub. L. 89-597, as amended by Pub. L. 90-87, Sept. 21, 1967, 81 Stat. 226; Pub. L. 90-505, Sept. 21, 1968, 82 Stat. 856; Pub. L. 91-71, Sept. 22, 1969, 83 Stat. 115; Pub. L. 91-151, title I, § 1, Dec. 23, 1969, 83 Stat. 371; Pub. L. 92-8, § 1, Mar. 31, 1971, 85 Stat. 13; Pub. L. 92-15, § 1, May 18, 1971, 85 Stat. 38; Pub. L. 93-63, July 6, 1973, 87 Stat. 147; Pub. L. 93-100, § 1, Aug. 16, 1973, 87 Stat. 342; Pub. L. 93-495, title I, § 107, Oct. 28, 1974, 88 Stat. 1505; Pub. L. 94-200, title I, § 101, Dec. 31, 1975, 89 Stat. 1124; Pub. L. 95-22, title I, § 101, Apr. 19, 1977, 91 Stat. 49; Pub. L. 95-188, title I, § 101, Nov. 16, 1977, 91 Stat. 1387; Pub. L. 95-630, title XVI, § 1601, Nov. 10, 1978, 92 Stat. 3713, provided that: "Effective December 15, 1980:

[*See main edition for text of* (1) *to* (4)]

Section 1603 of Pub. L. 95-630 directed that the substitution of "December 15, 1980" for "December 15, 1978" in section 7 of Pub. L. 89-597, set out above, take effect Nov. 10, 1978.

ELIMINATION OR REDUCTION OF INTEREST RATE DIFFERENTIAL BETWEEN SAVINGS BANKS AND SAVINGS AND LOAN, BUILDING AND LOAN, OR HOMESTEAD ASSOCIATIONS

Pub. L. 94-200, title I, § 102, Dec. 31, 1975, 89 Stat. 1124, as amended by Pub. L. 95-630, title XVI, § 1602, Nov. 10, 1978, 92 Stat. 3713, provided that:

"(a) An interest rate differential for any category of deposits or accounts which is in effect on December 10, 1975, between (1) any bank (other than a savings bank) the deposits of which are insured by the Federal Deposit Insurance Corporation and (2) any savings and loan, building and loan, or homestead association (including cooperative banks) the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation or any mutual savings bank as defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(j)) [section 1813(f) of this title] may not be eliminated or reduced unless—

[*See main edition for text of* (A) *and* (B); (b)]

"(c) In any State where any provision of State or Federal law authorizes any savings and loan, building and loan, or homestead association (including any cooperative bank) the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation or any mutual savings bank, as defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(f)), to offer any third-party payment account, there shall be no differential in the maximum interest rate payable between (1) banks (other than savings banks) the deposits of which are insured by the Federal Deposit Insurance Corporation, and (2) savings and loan, building and loan, or homestead associations (including cooperative banks) the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation or mutual savings banks, as defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(f)), with respect to savings deposits or accounts from which automatic transfers to the institution itself or to a demand or

other deposit account of the same depositor or accountholder at such institution may be made as a normal practice, pursuant to a prearranged agreement with the depositor or accountholder to make such transfers to cover checks, drafts, or similar instruments drawn by the depositor or accountholder on such institution. Notwithstanding any of the provisions of subsection (b) of this section, the maximum rate of interest payable on a savings deposit or account described in the preceding sentence shall be the rate which banks (other than mutual savings banks) the deposits of which are insured by the Federal Deposit Insurance Corporation may pay on such accounts."

Section 1603 of Pub. L. 95-630 directed that the addition of subsec. (c) to section 102 of Pub. L. 94-200, set out above, take effect Nov. 10, 1978.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 505, 1424, 1828, 3105 of this title.

§ 463. Limitation on amount of balance with State bank or trust company

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 505, 1424, 1828, 3105 of this title.

§ 464. Checking against and withdrawal of reserve balance

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 505, 1424, 1828, 3105 of this title.

§ 465. Basis for ascertaining deposits against which required balance is determined

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 505, 1424, 1828, 3105 of this title.

§ 466. Reserves of banks in dependencies or insular possessions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 505, 1424, 1828, 3105 of this title.

SUBCHAPTER XV—BANK EXAMINATIONS

§ 481. Appointment of examiners; examination of member banks, State banks, and trust companies; reports

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 330, 482, 3102 of this title; title 5 section 5373.

§ 483. Special examination of member banks; information of condition furnished to Board of Governors of the Federal Reserve System

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3105 of this title.

SUBCHAPTER XVI—CIVIL LIABILITY OF FEDERAL RESERVE AND MEMBER BANKS, SHAREHOLDERS, AND OFFICERS

§ 503. Liability of directors and officers of member banks

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 504 of this title.

§ 504. Civil penalty

(a) Making loans, extensions of credit, purchases of securities, etc., respecting affiliates, executive officers, etc.

Any member bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such member bank who violates any provision of section 371c, 375, 375a, 375b, 376, or 503 of this title, or any regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Comptroller of the Currency in the case of a national bank, or the Board in the case of a State member bank, by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(b) Amount of penalty

In determining the amount of the penalty the Comptroller of the Currency or the Board, as the case may be, shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the member bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(c) Opportunity for hearing

The member bank or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in subsection (d) of this section. If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(d) Review by United States court of appeals

Any member bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the member bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Comptroller of the Currency or the Board, as the case may be. The Comptroller of the Currency or the Board, as the case may be, shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28. The findings of the Comptroller of the Currency or the Board, as the case may be, shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5.

(e) Action by Attorney General for failure to pay assessment

If any member bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Comptroller of the Currency or the Board, as the case may be, shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(f) Promulgation of regulations

The Comptroller of the Currency and the Board shall promulgate regulations establishing procedures necessary to implement this section.

(g) Penalties covered into Treasury of United States

All penalties collected under authority of this section shall be covered into the Treasury of the United States.

(Dec. 23, 1913, ch. 6, § 29, as added Nov. 10, 1978, Pub. L. 95-630, title I, § 101, 92 Stat. 3641.)

CODIFICATION

In subsec. (a), "section 371c, 375, 375a, 375b, 376, or 503 of this title" in the original read "section 22 or 23A of this Act", meaning section 22 or 23A of the Federal Reserve Act. Section 23A is classified to 371c of this title. Subsections (d) to (h) of section 22 are classified to sections 375, 375a, 375b, 376, and 503 of this title. Former subsections (a) to (c) and (h) to (k), which were classified to sections 593 to 599 of this title, were repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948, and the provisions thereof were reenacted as sections 217, 218, 219, 220, 655, 1005, 1014, 1906, and 1909 of Title 18, Crimes and Criminal Procedure. Sections 217, 218, 219, and 220 of Title 18 were redesignated as sections 212, 213, 214, and 215 of Title 18 by act Oct. 23, 1962, Pub. L. 87-849, § 1(d), 76 Stat. 1125.

EFFECTIVE DATE

Section effective with respect to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 93 of this title.

§ 505. Civil penalty respecting depository, reserve, etc., requirements; amount; hearing; review; action by Attorney General; regulations

(1) Any member bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such member bank who violates any provision of this section and sections 142, 371a, 371b, 371b-1, 374, 374a, 461, and 463 to 466 of this title, or any regulation or order issued by the Board pursuant thereto, shall forfeit and pay a civil money penalty of not more than $100 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Board by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(2) In determining the amount of the penalty the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the member bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) The member bank or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in paragraph (4). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(4) Any member bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the member bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Board. The Board shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28. The findings of the Board shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5.

(5) If any member bank or person fails to pay an assessment after it has become a final and unappealable order or after the court of appeals has entered final judgment in favor of the agency, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(6) The Board shall promulgate regulations establishing procedures necessary to implement this section.

(7) All penalties collected under authority of this section shall be covered into the Treasury of the United States.

(Dec. 23, 1913, ch. 6, § 19(j), as added Nov. 10, 1978, Pub. L. 95-630, title I, § 102, 92 Stat. 3642.)

CODIFICATION

Another section 19(j) of the Federal Reserve Act, act Dec. 23, 1913, ch. 6, 38 Stat. 251, is set out as section 371b of this title.

EFFECTIVE DATE

Section effective with respect to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 93 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1424, 1828 of this title.

CHAPTER 4—TAXATION

SUBCHAPTER I—FEDERAL RESERVE BANKS

§ 531. Exemption from taxation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 128.

CHAPTER 6—FOREIGN BANKING

SUBCHAPTER II—ORGANIZATION OF CORPORATIONS TO DO FOREIGN BANKING

Sec.
611a. Statement of purposes; rules and regulations [New].

SUBCHAPTER I—ESTABLISHMENT BY NATIONAL BANKS OF FOREIGN BRANCHES AND INVESTMENTS IN BANKS DOING FOREIGN BUSINESS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 36, 371c, 618, 1818, 1841, 3101, 3204 of this title; title 15 section 19.

§ 601. Authorization; conditions and regulations

STUDY BY SECRETARY OF TREASURY OF DISCRIMINATORY PRACTICES BY FOREIGN NATIONS AGAINST UNITED STATES BANKS; REPORT AND RECOMMENDATIONS TO CONGRESS

Pub. L. 95-369, § 9(a), formerly § 9, Sept. 17, 1978, 92 Stat. 623, renumbered Pub. L. 95-630, title III, § 311, Nov. 10, 1978, 92 Stat. 3678, provided that: "The Secretary of the Treasury, in conjunction with the Secretary of State, the Board, the Comptroller, and the Federal Deposit Insurance Corporation shall within 90 days after enactment of this bill [Sept. 17, 1978] commence a study of the extent to which banks organized under the laws of the United States or any State thereof are denied, whether by law or practice, national treatment in conducting banking operations in foreign countries, and the effects, if any, of such discrimination on United States exports to those countries. On or before one year after enactment of this section [Sept. 17, 1978], the Secretary of the Treasury shall be required to report his findings, conclusions, and recommendations from such study to the Congress and describe the efforts undertaken by the United States to eliminate any foreign laws or practices that discriminate against banks organized under the laws of the United States or any State thereof, or that serve as a barrier to the financing of United States exports to any foreign country."

SUBCHAPTER II—ORGANIZATION OF CORPORATIONS TO DO FOREIGN BANKING

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 371c, 1818, 1841, 3103, 3204 of this title; title 15 section 77kkk.

§ 611a. Statement of purposes; rules and regulations

The Congress declares that it is the purpose of this subchapter to provide for the establishment of international banking and financial corporations operating under Federal supervision with powers sufficiently broad to enable them to compete effectively with similar foreign-owned institutions in the United States and abroad; to afford to the United States exporter and importer in particular, and to United States commerce, industry, and agriculture in general, at all times a means of financing international trade, especially United States exports; to foster the participation by regional and smaller banks throughout the United States in the provision of international banking and financing services to all segments of United States agriculture, commerce, and industry, and, in particular small business and farming concerns; to stimulate competition in the provision of international banking and financing services throughout the United States; and, in conjunction with each of the preceding purposes, to facilitate and stimulate the export of United States goods, wares, merchandise, commodities, and services to achieve a sound United States international trade position. The Board of Governors of the Federal Reserve System shall issue rules and regulations under this subchapter consistent with and in furtherance of the purposes described in the preceding sentence, and, in accordance therewith, shall review and revise any such rules and regulations at least once every five years, the first such period commencing with the effective date of rules and regulations issued pursuant to section 3(a) of the International Banking Act of 1978, in order to ensure that such purposes are being served in light of prevailing economic conditions and banking practices.

(Dec. 23, 1913, ch. 6, § 25(a)(par.), as added Sept. 17, 1978, Pub. L. 95-369, § 3(b), 92 Stat. 608.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this section" meaning section 25(a) of act Dec. 23, 1913, which is classified to sections 611 to 631 of this title.

Section 3(a) of the International Banking Act of 1978, referred to in text, is Pub. L. 95-369, § 3(a), Sept. 17, 1978, 92 Stat. 608, which is set out as a note below.

CODIFICATION

Section constitutes the second par. of section 25(a), which was added to act Dec. 23, 1913, ch. 6, by Pub. L. 95-369.

ELIMINATION OR MODIFICATION OF RESTRICTIONS LIMITING FOREIGN BANKING; CONGRESSIONAL DECLARATION OF PURPOSE

Section 3(a) of Pub. L. 95-369 provided that: "It is the purpose of this section [adding this section, amending sections 614, 615, 618, and 619 of this title, and enacting provisions set out as note under this section and section 247 of this title] to eliminate or modify provisions in section 25(a) of the Federal Reserve Act [this subchapter] that (1) discriminate against foreign-owned banking institutions, (2) disadvantage or unnecessarily restrict or limit corporations organized under section 25(a) of the Federal Reserve Act in competing with foreign-owned banking institutions in the United States or abroad or (3) impede the attainment of the Congressional purposes set forth in section 25(a) of the Federal Reserve Act as amended by subsection (b) of this section [adding this section]. In furtherance of such purpose, the Congress believes that the Board should review and revise its rules, regulations, and interpretations issued pursuant to section 25(a) of the Federal Reserve Act to eliminate or modify any restrictions, conditions, or limitations not required by section 25(a) of the Federal Reserve Act, as amended, that (1) discriminate against foreign-owned banking institutions, (2) disadvantage or unnec-

essarily restrict or limit corporations organized under section 25(a) of the Federal Reserve Act in competing with foreign-owned banking institutions in the United States or abroad, or (3) impede the attainment of the Congressional purposes set forth in section 25(a) of the Federal Reserve Act as amended by subsection (b) of this section. Rules and regulations pursuant to this subsection and section 25(a) of the Federal Reserve Act shall be issued not later than 150 days after the date of enactment of this section [Sept. 17, 1978] and shall be issued in final form and become effective not later than 120 days after they are first issued."

§ 614. Organization certificate; acknowledgment; forwarding to, filing, and approval by Board of Governors of the Federal Reserve System; permit to do business; body corporate; name; seal; corporate succession; contracts; suits; directors, officers, and employees; bylaws

The persons signing the organization certificate shall duly acknowledge the execution thereof before a judge of some court of record or notary public, who shall certify thereto under the seal of such court or notary, and thereafter the certificate shall be forwarded to the Board of Governors of the Federal Reserve System to be filed and preserved in its office. Upon duly making and filing articles of association and an organization certificate, and after the Board of Governors of the Federal Reserve System has approved the same and issued a permit to begin business, the association shall become and be a body corporate, and as such and in the name designated therein shall have power to adopt and use a corporate seal, which may be changed at the pleasure of its board of directors; to have succession for a period of twenty years unless sooner dissolved by the act of the shareholders owning two-thirds of the stock or by an act of Congress or unless its franchises become forfeited by some violation of law; to make contracts; to sue and be sued, complain, and defend in any court of law or equity; to elect or appoint directors; and, by its board of directors, to appoint such officers and employees as may be deemed proper, define their authority and duties, require bonds of them, and fix the penalty thereof, dismiss such officers or employees, or any thereof, at pleasure and appoint others to fill their places; to prescribe, by its board of directors, bylaws not inconsistent with law or with the regulations of the Board of Governors of the Federal Reserve System regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers and employees appointed, its property transferred, and the privileges granted to it by law exercised and enjoyed.

(As amended Sept. 17, 1978, Pub. L. 95-369, § 3(c), 92 Stat. 609.)

AMENDMENTS

1978—Pub. L. 95-369 struck out ", all of whom shall be citizens of the United States" following "to elect or appoint directors".

§ 615. Powers of corporation

Each corporation organized as provided in sections 611 to 614 of this title shall have power, under such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe:

(a) Dealings in drafts, checks, bills of exchange, acceptances, and other evidences of indebtedness; purchase and sale of securities; letters of credit; purchase and sale of coin, bullion, and exchange; borrowing and loaning money; issue of debentures, bonds, and notes; deposits; limitation of liabilities; reserves

To purchase, sell, discount, and negotiate, with or without its indorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to purchase and sell, with or without its indorsement or guaranty, securities, including the obligations of the United States or of any State thereof but not including shares of stock in any corporation except as herein provided; to accept bills or drafts drawn upon it subject to such limitations and restrictions as the Board of Governors of the Federal Reserve System may impose; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to issue debentures, bonds, and promissory notes under such general conditions as to security and such limitations as the Board of Governors of the Federal Reserve System may prescribe; to receive deposits outside of the United States and to receive only such deposits within the United States as may be incidental to or for the purpose of carrying out transactions in foreign countries or dependencies or insular possessions of the United States; and generally to exercise such powers as are incidental to the power conferred by this Act or as may be usual, in the determination of the Board of Governors of the Federal Reserve System, in connection with the transaction of the business of banking or other financial operations in the countries, colonies, dependencies, or possessions in which it shall transact business and not inconsistent with the powers specifically granted herein. Nothing contained in this subchapter shall be construed to prohibit the Board of Governors of the Federal Reserve System, under its power to prescribe rules and regulations, from limiting the aggregate amount of liabilities of any or all classes incurred by the corporation and outstanding at any one time. Whenever a corporation organized under this subchapter receives deposits in the United States authorized by this subchapter, it shall carry reserves in such amounts as the Board of Governors of the Federal Reserve System may prescribe for member banks of the Federal Reserve System.

[*See main edition for text of* (b) *and* (c)]

(As amended Sept. 17, 1978, Pub. L. 95-369, § 3(d), (e), 92 Stat. 609.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-369, § 3(d), struck out ", but in no event having liabilities outstanding thereon at any one time exceeding ten times its capital stock and surplus" following "under such general conditions as to security and such limitations as the Board of Governors of the Federal Reserve System may prescribe".

Pub. L. 95-369, § 3(e), substituted "for member banks of the Federal Reserve System" for ", but in no event

less than 10 per centum of its deposits" following "it shall carry reserves in such amounts as the Board of Governors of the Federal Reserve System may prescribe".

§ 618. Capital stock; amount; when paid in

No corporation shall be organized under the provisions of this subchapter with a capital stock of less than $2,000,000, one-quarter of which must be paid in before the corporation may be authorized to begin business, and the remainder of the capital stock of such corporation shall be paid in installments of at least 10 per centum on the whole amount to which the corporation shall be limited as frequently as one installment at the end of each succeeding two months from the time of the commencement of its business operations until the whole of the capital stock shall be paid in: *Provided, however,* That whenever $2,000,000 of the capital stock of any corporation is paid in the remainder of the corporation's capital stock or any unpaid part of such remainder may, with the consent of the Board of Governors of the Federal Reserve System and subject to such regulations and conditions as it may prescribe, be paid in upon call from the board of directors; such unpaid subscriptions, however, to be included in the maximum of 10 per centum of the national bank's capital and surplus which a national bank is permitted under the provisions of this Act to hold in stock of corporations engaged in business of the kind described in this subchapter and subchapter I of this chapter. The capital stock of any such corporation may be increased at any time, with the approval of the Board of Governors of the Federal Reserve System, by a vote of two-thirds of its shareholders or by unanimous consent in writing of the shareholders without a meeting and without a formal vote, but any such increase of capital shall be fully paid in within ninety days after such approval; and may be reduced in like manner, provided that in no event shall it be less than $2,000,000. No corporation, except as herein provided, shall during the time it shall continue its operations, withdraw or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. Any national banking association may invest in the stock of any corporation organized under the provisions of said sections, but the aggregate amount of stock held in all corporations engaged in business of the kind described in this subchapter and subchapter I of this chapter shall not exceed 10 per centum of the subscribing bank's capital and surplus.

(As amended Sept. 17, 1978, Pub. L. 95-369, § 3(d), 92 Stat. 609.)

AMENDMENTS

1978—Pub. L. 95-369 struck out proviso limiting liabilities outstanding at any one time upon debentures, bonds and promissory notes to not in excess of ten times its paid in capital and surplus, following "stock of corporations engaged in business of the kind described in this subchapter and subchapter I of this chapter".

§ 619. Capital stock; by whom held; ownership of capital stock by foreign bank

Except as otherwise provided in this subchapter, a majority of the shares of the capital stock of any such corporation shall at all times be held and owned by citizens of the United States, by corporations the controlling interest in which is owned by citizens of the United States, chartered under the laws of the United States or of a State of the United States, or by firms or companies, the controlling interest in which is owned by citizens of the United States. Notwithstanding any other provisions of this subchapter, one or more foreign banks, institutions organized under the laws of foreign countries which own or control foreign banks, or banks organized under the laws of the United States, the States of the United States, or the District of Columbia, the controlling interests in which are owned by any such foreign banks or institutions, may, with the prior approval of the Board of Governors of the Federal Reserve System and upon such terms and conditions and subject to such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe, own and hold 50 per centum or more of the shares of the capital stock of any corporation organized under this subchapter and any such corporation shall be subject to the same provisions of law as any other corporation organized under this subchapter, and the terms "controls" and "controlling interest" shall be construed consistently with the definition of "control" in section 1841 of this title. For the purposes of the preceding sentence of this paragraph the term "foreign bank" shall have the meaning assigned to it in the International Banking Act of 1978 [12 U.S.C. 3101 et seq.].

(As amended Sept. 17, 1978, Pub. L. 95-369, § 3(f), 92 Stat. 609.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this section" meaning section 25(a) of act Dec. 23, 1913, which is classified to sections 611 to 631 of this title.

The International Banking Act of 1978, referred to in text, is Pub. L. 95-369, Sept. 17, 1978, 92 Stat. 607, which enacted sections 347d, 611a, and 3101 to 3108 of this title, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, 1831b, and 1841 of this title, and enacted provisions set out as notes under sections 36, 247, 601, 611a, and 3101 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

AMENDMENTS

1978—Pub. L. 95-369 inserted "Except as otherwise provided in this subchapter" preceding "a majority of the shares", and added provision relating to the ownership of 50 per centum of the shares of capital stock by a foreign bank with prior approval of the Board of Governors of the Federal Reserve System.

CHAPTER 6A—EXPORT-IMPORT BANK OF THE UNITED STATES

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
635a–1. Export credit competition [New].
635a–2. Implementation of regulations and procedures to lessen adverse effect of loans and guarantees on industries in United States; report by United States International Trade Commission [New].
635a–3. Export-Import Bank financing to match foreign financing [New].

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 635a–3, 635m of this title.

§ 635. Powers and functions of Bank

[*See main edition for text of* (a)]

(b) Guarantees, insurance, and extension of credit functions; competitive with Government-supported rates and terms and conditions of foreign exporting countries; survey and report; interest rates; private capital and small business concern encouragement; national interest determinations; loans to Union of Soviet Socialist Republics for fossil fuel research, etc.; nuclear safeguards violations resulting in limitations on exports and credit; defense article credit sales to less developed countries; amount outstanding; supplementation of Commodity Credit Corporation programs; prohibitions respecting Republic of South Africa

(1)(A) It is the policy of the United States to foster expansion of exports of manufactured goods, agricultural products, and other goods and services, thereby contributing to the promotion and maintenance of high levels of employment and real income and to the increased development of the productive resources of the United States. To meet this objective, the Export-Import Bank is directed, in the exercise of its functions, to provide guarantees, insurance, and extensions of credit at rates and on terms and other conditions which are competitive with the Government-supported rates and terms and other conditions available for the financing of exports from the principal countries whose exporters compete with United States exporters. The Bank shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in government-supported export financing and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce government subsidized export financing. The Bank shall, on a semiannual basis, report to the appropriate committees of Congress its actions in complying with these directives. In this report the Bank shall include a survey of all other major export-financing facilities available from other governments and government-related agencies through which foreign exporters compete with the United States exporters and indicate in specific terms the ways in which the Bank's rates, terms, and other conditions compare with those offered from such other governments directly or indirectly. Further, the Bank shall at the same time survey a representative number of United States exporters and United States commercial lending institutions which provide export credit to determine their experience in meeting financial competition from other countries whose exporters compete with United States exporters. The results of this survey shall be included as part of the semiannual report required by this subparagraph. The Bank shall also include in the semiannual report a description of each loan by the Bank involving the export of any product or service related to the production, refining or transportation of any type of energy or the development of any energy resource with a statement assessing the impact, if any, on the availability of such products, services, or energy supplies thus developed for use within the United States.

(B) It is further the policy of the United States that loans made by the Bank shall bear interest at rates determined by the Board of Directors of the Bank, taking into consideration the average cost of money to the Bank as well as the Bank's mandate to support United States exports at rates and on terms and conditions which are competitive with exports of other countries; that the Bank in the exercise of its functions should supplement and encourage, and not compete with, private capital; that the Bank shall accord equal opportunity to export agents and managers, independent export firms, and small commercial banks in the formulation and implementation of its programs; that the Bank shall give due recognition to the policy stated in section 631(a) of title 15 that "the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise" and that in furtherance of this policy the Board of Directors shall designate an officer of the Bank who shall be responsible to the President of the Bank for all matters concerning or affecting small business concerns and who, among other duties, shall be responsible for advising small businessmen of the opportunities for small business concerns in the functions of the Bank and for maintaining liaison with the Small Business Administration and other departments and agencies in matters affecting small business concerns; that the Bank should give emphasis to assisting new and small business entrants in the agricultural export market, and shall, in cooperation with other relevant Government agencies, including the Commodity Credit Corporation, develop a program of education to increase awareness of export opportunities among small agribusinesses and cooperatives; that loans, so far as possible consistent with the carrying out of the purposes of subsection (a) of this section, shall generally be for specific purposes, and, in the judgment of the Board of Directors, offer reasonable assurance of repayment; and that in authorizing any loan or guarantee, the Board of Directors shall take into account any serious adverse effect of such loan or guarantee on the competitive position of United States industry, the availability of materials which are in short supply in the United

States, and employment in the United States, and shall give particular emphasis to the objective of strengthening the competitive position of United States exporters and thereby of expanding total United States exports. Only in cases where the President determines that such action would be in the national interest where such action would clearly and importantly advance United States policy in such areas as international terrorism, nuclear proliferation, environmental protection and human rights, should the Export-Import Bank deny applications for credit for nonfinancial or noncommercial considerations.

(C) Consistent with the policy of section 3261 of title 22 and section 2151q of title 22, the Board of Directors shall name an officer of the Bank whose duties shall include advising the President of the Bank on ways of promoting the export of goods and services to be used in the development, production, and distribution of nonnuclear renewable energy resources, disseminating information concerning export opportunities and the availability of Bank support for such activities, and acting as a liaison between the Bank and the Department of Commerce and other appropriate departments and agencies.

[*See main edition for text of* (2)]

(3) Except as provided by the fourth sentence of this paragraph, no loan or financial guarantee or combination thereof (i) in an amount which equals or exceeds $100,000,000, (ii) in an amount which equals or exceeds $25,000,000 for the export of goods or services involving research, exploration, or production of fossil fuel energy resources in the Union of Soviet Socialist Republics, or (iii) for the export of technology, fuel, equipment, materials, or goods or services to be used in the construction, alteration, operation, or maintenance of nuclear power, enrichment, reprocessing, research, or heavy water production facilities, shall be finally approved by the Board of Directors of the Bank, unless in each case the Bank has submitted to the Congress with respect to such loan, financial guarantee, or combination thereof, a detailed statement describing and explaining the transaction, at least 25 days of continuous session of the Congress prior to the date of final approval. For the purpose of the preceding sentence, continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 25 day period referred to in such sentence. Such statement shall contain—

[*See main edition for text of* (A) *and* (B)]

If the Bank submits a statement to the Congress under this paragraph and either House of Congress is in an adjournment for a period which continues for at least ten days after the date of submission of the statement, then any such loan or guarantee or combination thereof may, subject to the second sentence of this paragraph, be finally approved by the Board of Directors upon the termination of the twenty-five-day period referred to in the first sentence of this paragraph or upon the termination of a thirty-five-calendar-day period (which commences upon the date of submission of the statement), whichever occurs sooner.

(4) The Secretary of State shall report to the appropriate committees of Congress and to the Board of Directors of the Export-Import Bank if he determines that any country that has agreed to International Atomic Energy Agency nuclear safeguards materially violates, abrogates, or terminates, after October 26, 1977, such safeguards or that any country that has entered into an agreement for cooperation concerning the civil use of nuclear energy with the United States materially violates, abrogates, or terminates, after October 26, 1977, any guarantee or other undertaking to the United States made in such agreement or that any country that is not a nuclear-weapons state (as defined in article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons) detonates, after October 26, 1977, a nuclear explosive device. The Secretary shall specify which country or countries he has determined to have so acted, and the Board shall not give approval to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to such country unless the President determines that it is in the national interest for the Bank to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to such country and such determination has been reported to the Congress not less than twenty-five days of continuous session of the Congress prior to the date of such approval. For the purpose of the preceding sentence, continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the twenty-five day period referred to in such sentence.

(5) The Bank shall not guarantee, insure, or extend credit, or participate in the extension of credit in connection with (A) the purchase of any product, technical data, or other information by a national or agency of any nation which engages in armed conflict, declared or otherwise, with the Armed Forces of the United States, (B) the purchase by any nation (or national or agency thereof) of any product, technical data, or other information which is to be used principally by or in any such nation described in clause (A), or (C) the purchase of any liquid metal fast breeder nuclear reactor or any nuclear fuel reprocessing facility. The Bank shall not guarantee, insure, or extend credit, or participate in the extension of credit in connection with the purchase of any product, technical data, or other information by a national or agency of any nation if the President determines that any such transaction would be contrary to the national interest.

(6) The Bank shall not guarantee, insure, or extend credit, or participate in an extension of credit in connection with any credit sale of de-

fense articles and defense services to any country designated under section 4916 of title 26 as an economically less developed country for purposes of the tax imposed by section 4911 of title 26. The prohibitions set forth in this paragraph shall not apply with respect to any transaction the consummation of which the President determines would be in the national interest and reports such determination (within thirty days after making the same) to the Senate and House of Representatives. In making any such determination the President shall take into account, among other considerations, the national interest in avoiding arms races among countries not directly menaced by the Soviet Union or by Communist China; in avoiding arming military dictators who are denying social progress to their own peoples; and in avoiding expenditures by developing countries of scarce foreign exchange needed for peaceful economic progress.

(7) In no event shall the Bank have outstanding at any time in excess of 7½ per centum of the limitation imposed by section 635e of this title for such guarantees, insurance, credits or participation in credits with respect to exports of defense articles and services to countries which, in the judgment of the Board of Directors of the Bank, are less developed.

(8) The Bank shall supplement but not compete with private capital and the programs of the Commodity Credit Corporation to ensure that adequate financing will be made available to assist the export of agricultural commodities, except that, consistent with paragraph (1)(A) of this subsection, the Bank in assisting any such export transactions shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in Government-supported export financing, and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce Government subsidized export financing. In order to carry out the purposes of this subsection, the Bank shall consult with the Secretary of Agriculture and where the Secretary of Agriculture has recommended against Bank financing of the export of a particular agricultural commodity, shall take such recommendation into consideration in determining whether to provide credit or other assistance for any export sale of such commodity, and shall consider the importance of agricultural commodity exports to the United States export market and the nation's balance of trade in deciding whether or not to provide assistance under this subsection. The Bank shall include in the report to Congress under section 635g(a) of this title a description of the measures undertaken by it pursuant to this subsection.

(9) In no event shall the Bank guarantee, insure, or extend credit or participate in the extension of credit (a) in support of any export which would contribute to enabling the Government of the Republic of South Africa to maintain or enforce apartheid; (b) in support of any export to the Government of the Republic of South Africa or its agencies unless the President determines that significant progress toward the elimination of apartheid has been made and transmits to the Congress a statement describing and explaining that determination; or (c) in support of any export to other purchasers in the Republic of South Africa unless the United States Secretary of State certifies that the purchaser has endorsed and has proceeded toward the implementation of the following principles: nonsegregation of the races in all work facilities; equal and fair employment for all employees; equal pay for equal work for all employees; initiation and development of training programs to prepare nonwhite South Africans for supervisory, administrative, clerical, and technical jobs; increasing the number of nonwhites in management and supervisory positions; a willingness to engage in collective bargaining with labor unions; and improving the quality of life for employees in such areas as housing, transportation, schooling, recreation, and health facilities.

(c) Guarantees, insurance, coinsurance, and reinsurance functions; fractional charge; aggregate outstanding amount; fees and premiums; issuance, service and adjustments by agents

(1) The Bank is authorized and empowered to charge against the limitations imposed by section 635e of this title, not less than 25 per centum of the related contractual liability which the Bank incurs for guarantees, insurance, coinsurance, and reinsurance against political and credit risks of loss. The aggregate amount of guarantees, insurance, coinsurance, and reinsurance which may be charged on this fractional basis pursuant to this section shall not exceed $25,000,000,000 outstanding at any one time. Fees and premiums shall be charged in connection with such contracts commensurate, in the judgment of the Bank, with risks covered.

[*See main edition for text of (2)*]

(As amended Oct. 26, 1977, Pub. L. 95-143, §§ 1-3, 91 Stat. 1210; Nov. 10, 1978, Pub. L. 95-630, title XIX, §§ 1902-1904, 1907(a), 1909, 1910, 1915, 1916, 92 Stat. 3724-3727.)

CODIFICATION

As originally added by Pub. L. 95-630, pars. (8) and (9) of subsec. (b) of this section were designated as pars. (7) and (8) and were editorially redesignated as (8) and (9) to reflect the probable intent of Congress in view of the previous redesignation of former par. (6) as (7) by section 3(b) of Pub. L. 95-143. See 1978 Amendment notes below.

AMENDMENTS

1978—Subsec. (b)(1)(A). Pub. L. 95-630, § 1910, substituted "manufactured goods, agricultural products, and other goods and services" for "goods and related services".

Subsec. (b)(1)(B). Pub. L. 95-630, §§ 1904, 1916, inserted "that the Bank should give emphasis to assisting new and small business entrants in the agricultural export market, and shall, in cooperation with other relevant Government agencies, including the Commodity Credit Corporation, develop a program of education to increase awareness of export opportunities among small agribusinesses and cooperatives;" following "in matters affecting small business concerns;" and substituted "and shall give particular emphasis to the objective of strengthening the competitive position of the United States exporters and thereby of expanding total United States exports. Only in cases

where the President determines that such action would be in the national interest where such action would clearly and importantly advance United States policy in such areas as international terrorism, nuclear proliferation, environmental protection and human rights, should the Export-Import Bank deny applications for credit for nonfinancial or noncommercial considerations" for "and shall also take into account, in consultation with the Secretary of State, the observance of and respect for human rights in the country to receive the exports supported by a loan or financial guarantee and the effect such exports may have on human rights in such country".

Subsec. (b)(1)(C). Pub. L. 95-630, § 1907(a), added subsec. (b)(1)(C).

Subsec. (b)(3). Pub. L. 95-630, § 1902, substituted "Except as provided by the fourth sentence of this paragraph, no loan" for "No loan" and "$100,000,000" for "$60,000,000" and inserted provisions following subpar. (B).

Subsec. (b)(8). Pub. L. 95-630, § 1909, added subsec. (b)(8). See Codification note above.

Subsec. (b)(9). Pub. L. 95-630, § 1915, added subsec. (b)(9). See Codification note above.

Subsec. (c)(1). Pub. L. 95-630, § 1903, substituted "$25,000,000,000" for "$20,000,000,000".

1977—Subsec. (b)(1)(A). Pub. L. 95-143, § 1, inserted "and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce government subsidized export financing" following "government-supported export financing".

Subsec. (b)(1)(B). Pub. L. 95-143, § 2, inserted ", and shall also take into account, in consultation with the Secretary of State, the observance of and respect for human rights in the country to receive the exports supported by a loan or financial guarantee and the effect such exports may have on human rights in such country" following "employment in the United States".

Subsec. (b)(3). Pub. L. 95-143, § 3(a), inserted "(i)" following "No loan or financial guarantee or combination thereof" and ", or (iii) for the export of technology, fuel, equipment, materials, or goods or services to be used in the construction, alteration, operation, or maintenance of nuclear power, enrichment, reprocessing, research, or heavy water production facilities," following "Union of Soviet Socialist Republics" and substituted ", (ii) in an amount" for "shall be finally approved by the Board of Directors of the Bank, and no loan or financial guarantee or combination thereof".

Subsec. (b)(4). Pub. L. 95-143, § 3(b), added subsec. (b)(4). Former subsec. (b)(4) redesignated (b)(5).

Subsec. (b)(5). Pub. L. 95-143, § 3(b), (c), redesignated former subsec. (b)(4) as (b)(5) and, as so redesignated, added cl. (C). Former subsec. (b)(5) redesignated (b)(6).

Subsec. (b)(6). Pub. L. 95-143, § 3(b), redesignated former subsec. (b)(5) as (b)(6). Former subsec. (b)(6) redesignated (b)(7).

Subsec. (b)(7). Pub. L. 95-143, § 3(b), redesignated former subsec. (b)(6) as (b)(7).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1917 of Pub. L. 95-630 provided that: "This title [enacting sections 635a-1 to 635a-3 of this title and section 2153e-1 of Title 42, The Public Health and Welfare, and amending sections 635 and 635e to 635g of this title] shall take effect upon enactment [Nov. 10, 1978]."

SHORT TITLE OF 1978 AMENDMENT

Section 1901 of Pub. L. 95-630 provided: "That this title [which enacted sections 635a-1 to 635a-3 of this title and section 2153e-1 of Title 42, The Public Health and Welfare, amended sections 635 and 635e to 635g of this title, and enacted provisions set out as a note under this section] may be cited as the 'Export-Import Bank Act Amendments of 1978'."

EX. ORD. NO. 12166. DELEGATION OF FUNCTION OF PRESIDENT RELATING TO APPLICATION FOR CREDIT TO SECRETARY OF STATE

Ex. Ord. No. 12166, Oct. 19, 1979, 44 F.R. 60971, provided:

By the authority vested in me as President of the United States of America by Section 2(b)(1)(B) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(1)(B)), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

1-101. The function vested in the President by Section 2(b)(1)(B) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(1)(B)), is delegated to the Secretary of State. That function is the authority to determine that a denial by the Export-Import Bank of an application for credit would be in the national interest, where such action could clearly and importantly advance United States policy in such areas as international terrorism, nuclear proliferation, environmental protection and human rights.

1-102. Before making such a determination, the Secretary of State shall consult with the Secretary of Commerce and the heads of other interested Executive agencies.

1-103. In accord with Section 2(b)(1)(B) of that Act, only in those cases where the Secretary of State has made such a determination should the Export-Import Bank deny an application for credit for nonfinancial or noncommercial considerations.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 635g, 635i, 635j, 635m of this title; title 22 section 2357.

§ 635a. Management of Bank

UNITED STATES TRADE REPRESENTATIVE AND SECRETARY OF COMMERCE AS ADDITIONAL MEMBERS OF BOARD OF DIRECTORS OF EXPORT-IMPORT BANK OF THE UNITED STATES

For provisions directing that the United States Trade Representative and the Secretary of Commerce serve, ex officio and without vote, as additional members of the Board of Directors of the Export-Import Bank of the United States, see section 3 of 1979 Reorg. Plan No. 3, set out in the Appendix to Title 5, Government Organization and Employees.

§ 635a-1. Export credit competition

(a) The President is authorized and requested to begin negotiations at the ministerial level with other major exporting countries to end predatory export financing programs and other forms of export subsidies, including mixed credits, in third country markets as well as within the United States. The President shall report to the Congress prior to January 15, 1979, on progress toward meeting the goals of this section.

(b) The Export-Import Bank of the United States is authorized to provide guarantees, insurance, and extensions of credit at rates and terms and other conditions which are, in the opinion of the Board of Directors of the Bank, competitive with those provided by the government-supported export credit instrumentalities of other nations.

(Pub. L. 95-630, title XIX, § 1908, Nov. 10, 1978, 92 Stat. 3725.)

CODIFICATION

Section was enacted as part of the Export-Import Bank Act Amendments of 1978, and not as part of the Export-Import Bank Act of 1945 which comprises this subchapter.

EFFECTIVE DATE

Section effective Nov. 10, 1978, see section 1917 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 635 of this title.

§ 635a-2. Implementation of regulations and procedures to lessen adverse effect of loans and guarantees on industries in United States; report by United States International Trade Commission

The Bank shall implement such regulations and procedures as may be appropriate to insure that full consideration is given to the extent to which any loan or financial guarantee is likely to have an adverse effect on industries, including agriculture, and employment in the United States, either by reducing demand for goods produced in the United States or by increasing imports to the United States. To carry out the purposes of this subsection;[1] the Bank shall request, and the United States International Trade Commission shall furnish, a report assessing the impact of the Bank's activities on industries and employment in the United States. Such report shall include an assessment of previous loans or financial guarantees and shall provide recommendations concerning general areas which may adversely affect domestic industries, including agriculture, and employment.

(Pub. L. 95-630, title XIX, § 1911, Nov. 10, 1978, 92 Stat. 3726.)

CODIFICATION

Section was enacted as part of the Export-Import Bank Act Amendments of 1978, and not as part of the Export-Import Bank Act of 1945 which comprises this subchapter.

EFFECTIVE DATE

Section effective Nov. 10, 1978, see section 1917 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 635 of this title.

§ 635a-3. Export-Import Bank financing to match foreign financing

(a)(1) Upon receipt of information that foreign sales to the United States are being offered involving foreign official export credits which exceed limits under existing standstills, minutes, or practices to which the United States and other major exporting countries have agreed, the Secretary of the Treasury shall immediately conduct an inquiry to determine whether "noncompetitive financing" is being offered.

(2) If the Secretary determines that such foreign "noncompetitive" financing is being offered, he shall request the immediate withdrawal of such financing by the foreign official export credit agency involved.

(3) If the offer is not withdrawn or if there is no immediate response to the withdrawal request, the Secretary of the Treasury shall notify the country offering such financing and all parties to the proposed transaction that the Eximbank may be authorized to provide competing United States sellers with financing to match that available through the foreign official export financing entity.

(b) The Secretary of the Treasury shall only issue such authorization to the Bank to provide guarantees, insurance and credits to competing United States sellers, if he determines that:

(1) the availability of foreign official noncompetitive financing is likely to be a determining factor in the sale, and

(2) the foreign noncompetitive financing has not been withdrawn on the date the Bank is authorized to provide competitive financing.

(c) Upon receipt of authorization by the Secretary of the Treasury, the Export-Import Bank may provide financing to match that offered by the foreign official export credit entity: *Provided, however,* That loans, guarantees and insurance provided under this authority shall conform to all provisions of the Export-Import Bank Act of 1945, as amended [12 U.S.C. 635 et seq.].

(Pub. L. 95-630, title XIX, § 1912, Nov. 10, 1978, 92 Stat. 3726.)

REFERENCES IN TEXT

The Export-Import Bank Act of 1945, as amended, referred to in subsec. (c), is act July 31, 1945, ch. 341, 59 Stat. 526, as amended, which is classified generally to subchapter 1 (§ 635 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 635 of this title and Tables.

CODIFICATION

Section was enacted as part of the Export-Import Bank Act Amendments of 1978, and not as part of the Export-Import Bank Act of 1945 which comprises this subchapter.

EFFECTIVE DATE

Section effective Nov. 10, 1978, see section 1917 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 635 of this title.

§ 635e. Restrictions on amount outstanding; effectiveness of spending authority; limitations on amount and purposes of loans and financial guarantees for export to Union of Soviet Socialist Republics; Presidential increase of limitation

(a) The Export-Import Bank of the United States shall not have outstanding at any one time loans, guaranties, and insurance in an aggregate amount in excess of $40,000,000,000. All spending authority provided under this subchapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

[*See main edition for text of* (b)]

(As amended Nov. 10, 1978, Pub. L. 95-630, title XIX, §§ 1905, 1914, 92 Stat. 3725, 3727.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-630 substituted "$40,000,000,000" for "$25,000,000,000" and added provision that all spending authority provided under this chapter be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective Nov. 10, 1978, see section 1917 of Pub. L. 95-630, set out as an

[1] So in original. Probably should read "section".

Effective Date of 1978 Amendment note under section 635 of this title.

§ 635f. Termination date of Bank's functions; exceptions; liquidation

Export-Import Bank of the United States shall continue to exercise its functions in connection with and in furtherance of its objects and purposes until the close of business on September 30, 1983, but the provisions of this section shall not be construed as preventing the bank from acquiring obligations prior to such date which mature subsequent to such date or from assuming prior to such date liability as guarantor, endorser, or acceptor of obligations which mature subsequent to such date or from issuing, either prior or subsequent to such date, for purchase by the Secretary of the Treasury or any other purchasers, its notes, debentures, bonds, or other obligations which mature subsequent to such date or from continuing as a corporate agency of the United States and exercising any of its functions subsequent to such date for purposes of orderly liquidation, including the administration of its assets and the collection of any obligations held by the bank.

(As amended Oct. 26, 1977, Pub. L. 95-143, § 4, 91 Stat. 1211; Sept. 30, 1978, Pub. L. 95-407, 92 Stat. 882; Nov. 10, 1978, Pub. L. 95-630, title XIX, § 1906, 92 Stat. 3725.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "September 30, 1983" for "December 31, 1978".

Pub. L. 95-407 substituted "December 31, 1978" for "September 30, 1978".

1977—Pub. L. 95-143 substituted "September 30, 1978" for "June 30, 1978".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective Nov. 10, 1978, see section 1917 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 635 of this title.

§ 635g. Report to Congress; time for submission; contents

[*See main edition for text of* (a)]

(b) The report shall contain a description of actions taken by the Bank in pursuance of the policy of aiding, counseling, assisting, and protecting, insofar as is possible, the interests of small business concerns. In addition, the Bank shall include in the report a description of specific activities and programs undertaken by it to achieve the policy of section 3261 of title 22, and section 2151q of title 22, as required by section 635(b)(1)(C) of this title.

(As amended Nov. 10, 1978, Pub. L. 95-630, title XIX, § 1907(b), 92 Stat. 3725.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-630 added provision that in addition, the Bank include in the report a description of specific activities and programs undertaken by it to achieve the policy of section 3261 of title 22, and section 2151q of title 22, as required by section 635(b)(1)(C) of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective Nov. 10, 1978, see section 1917 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 635 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 635 of this title.

CHAPTER 7A—AGRICULTURAL MARKETING

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1150a of this title; title 15 section 78*l*.

§ 1141j. Miscellaneous provisions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2302; title 26 section 3131; title 29 section 203; title 42 section 410; title 49 sections 10526, 10562.

CHAPTER 8—ADJUSTMENT AND CANCELLATION OF FARM LOANS

§ 1150. Compromise, adjustment, and cancellation of farm loans; conditions; delegation of powers and duties by Secretary of Agriculture

The Secretary of Agriculture, hereinafter referred to as the Secretary, is authorized and directed to compromise, adjust, or cancel indebtedness arising from loans and payments made or credit extended to farmers under the provisions of the several Acts of Congress or programs enumerated in section 1150a of this title: *Provided,* That the Secretary finds, after such investigation as he deems sufficient to establish the facts, that (1) said indebtedness has been due and payable for five years or more; (2) the debtor is unable to pay said indebtedness in full and has no reasonable prospect of being able to do so; (3) the debtor has acted in good faith in an effort to meet his obligation; and (4) the principal amount of said indebtedness is not in excess of $1,000. The Secretary is further authorized at his discretion to cancel and discharge indebtedness arising under said Acts of Congress or programs when the amount of said indebtedness is less than $10, or the debtor is deceased and there is no reasonable prospect of recovering from his estate, or his whereabouts has remained unknown for two years and there is no reasonable prospect of obtaining collection, or he has been discharged of the indebtedness in any proceeding under the Bankruptcy Act or under title 11. The compromises, adjustments, or cancelations[1] authorized by this section shall be effected through such agencies, upon such terms and conditions, and subject to such regulations, as the Secretary may prescribe, and the Secretary may delegate the exercise of any such powers and functions to such officers or employees of the Department of Agriculture as he may designate.

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 305, 92 Stat. 2674.)

REFERENCES IN TEXT

The Bankruptcy Act, referred to in text, is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95-598, §§ 401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

[1] So in original should be "cancellations".

AMENDMENTS

1978—Pub. L. 95-598 substituted "Bankruptcy Act or under title 11" for "Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' ".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598 set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 11—FEDERAL HOME LOAN BANKS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1452, 1464 of this title; title 15 section 57a.

§ 1424. Eligibility of member and nonmember borrowers

REFERENCES IN TEXT

Section 461 of this title, referred to in subsec. (a), was in the original a reference to "section 19 of the Federal Reserve Act". Definition provisions of section 19 are classified to section 461 of this title. Other provisions of section 19 are classified to sections 142, 371a, 371b, 371b-1, 374, 374a, 463 to 466, and 505 of this title.

§ 1425b. Rate of interest payable on deposits, shares or withdrawable accounts by members, insured institutions and other nonmember financial institutions

[*See main edition for text of* (a) *to* (d)]

(e) State usury laws inapplicable to certain obligations

No member or nonmember association, institution, or bank or affiliate thereof, or any successor or assignee, or any endorser, guarantor, or surety thereof may plead, raise, or claim, directly or by counterclaim, setoff, or otherwise, with respect to any deposit or obligation of such member or nonmember association, institution, bank, or affiliate, any defense, right, or benefit under any provision of a statute or constitution of a State or of a territory of the United States, or of any law of the District of Columbia, regulating or limiting the rate of interest which may be charged, taken, received, or reserved, and any such provision is hereby preempted, and no civil or criminal penalty which would otherwise be applicable under such provision shall apply to such member or nonmember association, institution, bank, or affiliate or to any other person.

(As amended Nov. 5, 1979, Pub. L. 96-104, title II, § 203, 93 Stat. 793; Dec. 28, 1979, Pub. L. 96-161, title II, § 210, 93 Stat. 1239.)

CODIFICATION

Section 203 of Pub. L. 96-104, set out in the credit of this section, was repealed by section 212 of Pub. L. 96-161, effective at the close of Dec. 27, 1979. The amendment of this section by that repealed provision, described in the 1979 Amendment note under this section, shall continue in effect for limited purposes pursuant to section 212 of Pub. L. 96-161. See Savings Provisions note, describing the provisions of section 212 of Pub. L. 96-161, set out under section 85 of this title.

Section 303 of Pub. L. 93-501, set out in the credit of this section, was repealed by Pub. L. 96-104, § 1, Nov. 5, 1979, 93 Stat. 789. The amendment of this section by that repealed provision, described in the 1974 Amendment note set out under this section in the main edition, shall continue in effect for limited purposes pursuant to section 1 of Pub. L. 96-104. See Savings Provisions note, describing the provisions of section 1 of Pub. L. 96-104, set out under section 85 of this title.

AMENDMENTS

1979—Subsec. (e). Pub. L. 96-161 added subsec. (e). A prior subsec. (e), added by Pub. L. 96-104 and identical to the subsec. (e) added by Pub. L. 96-161, was repealed by section 212 of Pub. L. 96-161. See Codification note above.

Pub. L. 96-104 added subsec. (e). A prior subsec. (e), which also related to the inapplicability of State usury laws to certain obligations, was repealed by section 1 of Pub. L. 96-104.

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96-161 applicable only with respect to deposits made or obligations issued in any State during the period beginning on Dec. 28, 1979, and ending on the earliest of (1) in the case of a State statute, July 1, 1980; (2) the date, after Dec. 28, 1979, on which such State adopts a law stating in substance that such State does not want the amendment made by Pub. L. 96-161 to apply with respect to such deposits and obligations; or (3) the date on which such State certifies that the voters of such State, after Dec. 28, 1979, have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State which limits the amount of interest which may be charged in connection with such deposits and obligations, see section 211 of Pub. L. 96-161, set out as an Effective Date of 1979 Amendments note under section 371b-1 of this title.

Amendment by Pub. L. 96-104 applicable to deposits made or obligations issued in any State during the period beginning on Nov. 5, 1979, and ending on the earlier of July 1, 1981, the date after Nov. 5, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section to apply with respect to such deposits and obligations, or the date on which such State certifies that the voters of such State have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State, which limits the amount of interest which may be charged in connection with such deposits and obligations, see section 204 of Pub. L. 96-104, set out as an Effective Date of 1979 Amendments note under section 371b-1 of this title.

EFFECTIVE AND TERMINATION DATES

Section repealed effective December 15, 1980, see section 7(4) of Pub. L. 89-597, as amended, set out as an Effective and Termination Dates of 1966 Amendment note under section 461 of this title.

Section 304 of Pub. L. 93-501, set out as a note under section 371b-1 of this title, provided that subsec. (e) of this section is applicable to deposits made or obligations issued in any State after Oct. 29, 1974, but prior to the earlier of (1) July 1, 1977 or (2) the date (after Oct. 29, 1974) of enactment by the State of a law limiting the amount of interest which may be charged in connection with such deposits and obligations.

STATES HAVING CONSTITUTIONAL PROVISIONS REGARDING MAXIMUM INTEREST RATES

The provisions of title II of Pub. L. 96-161, which amended this section and repealed provisions which had formerly amended this section, to continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates, see section 213 of Pub. L. 96-161, set out as a note under section 86a of this title.

§ 1426. Capital stock

[*See main edition for text of* (a) *and* (b)]

(c) Minimum subscriptions; retirement of oversubscriptions; limitations; cancellation of oversubscriptions; aggregate unpaid loan principal; reports and information

[*See main edition for text of (1)*]

(2) The provisions of paragraph (1) of this subsection shall be subject to the following limitations:

[*See main edition for text of (i)*]

(ii) Notwithstanding any other provision of this subsection, no action shall be taken by any bank with respect to any member pursuant to any of the foregoing provisions of this subsection if the effect of such action would be to cause the aggregate outstanding advances, within the meaning of the last sentence of subsection (c) of section 1430 of this title or within the meaning of regulations of said Board defining said term for the purposes of this sentence, made by such bank to such member to exceed twenty times the amounts paid in by such member for outstanding capital stock held by such member.

[*See main edition for text of (3) to (5); (d) to (k)*]

(As amended Dec. 21, 1979, Pub. L. 96-153, title III, § 327, 93 Stat. 1121.)

REFERENCES IN TEXT

Federal savings and loan association, referred to in subsec. (i), deemed also a reference to Federal mutual savings bank, see section 1462 of this title.

AMENDMENTS

1979—Subsec. (c)(2)(ii). Pub. L. 96-153 substituted "twenty" for "twelve".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1422, 1430, 1730, 2804 of this title; title 15 sections 57a, 1607, 1681s, 1691c, 1692*l*, 1693o.

§ 1428a. Federal Savings and Loan Advisory Council; creation; composition and duties

SUBSISTENCE AND TRAVEL EXPENSES

Pub. L. 96-103, title III, § 301, Nov. 5, 1979, 93 Stat. 786, provided in part that: "Members and alternates of the Federal Savings and Loan Advisory Council shall be entitled to reimbursement from the Board as approved by the Board for transportation expenses incurred in attendance at meetings of or concerned with the work of such Council and may be paid in lieu of subsistence per diem not to exceed the dollar amount set forth in 5 U.S.C. 5703."

Similar provisions were contained in following appropriation acts:

Sept. 30, 1978, Pub. L. 95-392, title III, § 301, 92 Stat. 805.

Oct. 4, 1977, Pub. L. 95-119, title III, § 301, 91 Stat. 1087.

Aug. 9, 1976, Pub. L. 94-378, title III, § 301, 90 Stat. 1108.

§ 1430. Advances

[*See main edition for text of (a)*]

(b) Home mortgages as security

No home mortgages shall be accepted as collateral security for an advance by a Home Loan Bank if, at the time such advance is made (1) the home mortgage loan secured by it has more than thirty years to run to maturity, unless such home mortgage is insured under the National Housing Act, as amended [12 U.S.C. 1701 et seq.], or insured or guaranteed under the Servicemen's Readjustment Act of 1944, as amended, chapter 37 of title 38, or (2) the home mortgage exceeds a sum equal to the dollar limitation under the first proviso of the first sentence of section 1464(c) of this title for each home or other dwelling unit covered by such mortgage, or (3) is past due more than six months when presented, unless the amount of the debt secured by such home mortgage is less than 50 per centum of the value of the real estate with respect to which the home mortgage was given, as such real estate was appraised when the home mortgage was made. For the purposes of this subsection and subsection (a) of this section the value of real estate shall be as of the time the advance is made and shall be established by such certification by the borrowing institution or such other evidence, as the board may require. For the purposes of this section, each Home Loan Bank shall have power to make, or to cause or require to be made, such appraisals and other investigations as it may deem necessary. No home mortgage otherwise eligible to be accepted as collateral security for an advance by a Home Loan Bank shall be accepted if any director, officer, employee, attorney or agent of the Home Loan Bank or of the borrowing institution is personally liable thereon, unless the board has specifically approved by formal resolution such acceptance.

[*See main edition for text of (c) and (d)*]

(As amended Oct. 12, 1977, Pub. L. 95-128, title IV, § 406, 91 Stat. 1137.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-128 substituted prohibition against acceptance of a home mortgage as collateral security for an advance by a Federal Home Loan Bank if, at the time the advance is made, the home mortgage exceeds a sum equal to the dollar limitation under the first proviso of the first sentence of section 1464(c) of this title for each home or other dwelling unit covered by such mortgage for prior prohibition where the home mortgage exceeded a sum equal to $55,000 (except that with respect to dwellings in Alaska, Guam, and Hawaii the foregoing limitation, might, by regulation of the Board, be increased by not to exceed 50 per centum) for each home or other dwelling unit covered by the mortgage.

§ 1431. Powers and duties of banks

[*See main edition for text of (a) to (g)*]

(h) Investment of surplus funds

Such part of the assets of each Federal Home Loan Bank (except reserves and amounts provided for in subsection (g) of this section) as are not required for advances to members or nonmember borrowers, may be invested, to such extent as the bank may deem desirable and subject to such regulations, restrictions, and limitations as may be prescribed by the board, in obligations of the United States, in obligations, participations, or other instruments of or issued by

the Federal National Mortgage Association or the Government National Mortgage Association, in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 1454 or section 1455 of this title, in the stock of the Federal National Mortgage Association, in stock, obligations, or other securities of any small business investment company formed pursuant to section 681(d) of title 15, for the purpose of aiding members of the Federal Home Loan Bank System, and in such securities as fiduciary and trust funds may be invested in under the laws of the State in which the Federal Home Loan Bank is located.

[*See main edition for text of* (i) *to* (j)]

(As amended Dec. 21, 1979, Pub. L. 96-153, title III, § 324, 93 Stat. 1121.)

AMENDMENTS

1979—Subsec. (h). Pub. L. 96-153 added provisions relating to stock, obligations, or other securities of any small business investment company formed pursuant to section 681(d) of Title 15, for the purpose of aiding members of the Federal Home Loan Bank System.

§ 1437. Federal Home Loan Bank Board; powers and duties; independent agency; report to Congress

EXTENSION OF TERM OF OFFICE

Pub. L. 95-90, Aug. 4, 1977, 91 Stat. 564, provided that, effective July 1, 1977, through Aug. 15, 1977, any member of the Federal Home Loan Bank Board whose term of office is expiring shall continue to serve until a successor is appointed and has qualified, but not to exceed forty-five days.

Pub. L. 95-56, June 29, 1977, 91 Stat. 252, provided that, effective through July 31, 1977, any member of the Federal Home Loan Bank Board whose term of office is expiring continue to serve until a successor is appointed and has qualified, but not to exceed thirty days.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1427, 2804 of this title; title 15 sections 57a, 1607, 1681s, 1691c, 1692*l*, 1693o.

CHAPTER 11A—FEDERAL HOME LOAN MORTGAGE CORPORATION

§ 1451. Definitions

As used in this chapter—

[*See main edition for text of* (a) *to* (g)]

(h) The term "residential mortgage" means a mortgage which (1) is a mortgage on real estate, in fee simple or under a leasehold having such term as may be prescribed by the Corporation, upon which there is located a structure or structures designed in whole or in part for residential use, or which comprises or includes one or more condominium units or dwelling units (as defined by the Corporation) and (2) has such characteristics and meets such requirements as to amount, term, repayment provisions, number of families, status as a first lien on such real estate, and otherwise, as may be prescribed by the Corporation. The term "residential mortgage" also includes a loan or advance of credit insured under title I of the National Housing Act [12 U.S.C. 1702 et seq.] whose original proceeds are applied for in order to finance energy conserving improvements, or the addition of a solar energy system, to residential real estate. The term "residential mortgage" also includes a loan or advance of credit for such purposes not having the benefit of such insurance and includes loans made where the lender relies for purposes of repayment primarily on the borrower's general credit standing and forecast of income, with or without other security. The term "residential mortgage" is also deemed to include a secured loan or advance of credit the proceeds of which are intended to finance the rehabilitation, renovation, modernization, refurbishment, or improvement of properties as to which the Corporation may purchase a "residential mortgage" as defined under the first sentence of this subsection. The maximum principal obligation of loans purchased by virtue of the preceding sentence shall not exceed the dollar limits prescribed by the Federal Home Loan Bank Board with respect to similar types of loans made by Federal savings and loan associations. A "secured loan or advance of credit" is one in which a security interest is taken in the rehabilitated, renovated, modernized, refurbished, or improved property. Such term shall also include a mortgage, lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of title 26, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

[*See main edition for text of* (i) *to* (k)]

(As amended Pub. L. 95-619, title II, § 245, Nov. 9, 1978, 92 Stat. 3233; Pub. L. 95-630, title XVII, § 1702, Nov. 10, 1978, 92 Stat. 3718; Pub. L. 96-153, title III, § 316(c), Dec. 21, 1979, 93 Stat. 1118.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (h), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title I of the National Housing Act is classified generally to subchapter I (§ 1702 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

1979—Subsec. (h). Pub. L. 96-153 expanded the definition of residential mortgage to include a mortgage, lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

1978—Subsec. (h). Pub. L. 95-630 added provisions expanding the definition of "residential mortgage" to include a secured loan or advance of credit the proceeds of which are intended to finance the rehabilitation, renovation, modernization, refurbishment, or improvement of properties as to which the Corporation may purchase a "residential mortgage" as defined under the first sentence of this subsection, provisions relating to the maximum principal obligation of loans, and provisions defining "secured loan or advance of credit".

Pub. L. 95-619 added provisions relating to loans or advances of credit insured under title I of the National Housing Act whose original proceeds were applied for to finance energy conserving improvements or solar energy systems and provisions relating to certain loans or advances of credit for such purposes not so insured.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1703 of Pub. L. 95-630 provided that: "This title [amending this section and section 1464 of this title] shall take effect upon enactment [Nov. 10, 1978]."

§ 1452. Federal Home Loan Mortgage Corporation

[*See main edition for text of* (a) *to* (e)]

(f) Mortgages, obligations, or other securities sold by Corporation deemed lawful investments for security purposes

All mortgages, obligations, or other securities which are or have been sold by the Corporation pursuant to section 1454 or section 1455 of this title shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposits of which shall be under the authority and control of the United States or any officers thereof.

(As amended Pub. L. 96-153, title III, § 316(b), Dec. 21, 1979, 93 Stat. 1118.)

AMENDMENTS

1979—Subsec. (f). Pub. L. 96-153 added subsec. (f).

§ 1454. Purchase and sale of mortgages; residential mortgages; conventional mortgages; terms and conditions of sale or other disposition; authority to enter into, perform, and carry out transactions

(a)(1) The Corporation is authorized to purchase, and make commitments to purchase, residential mortgages from any Federal home loan bank, the Federal Savings and Loan Insurance Corporation, any member of a Federal home loan bank, or any other financial institution the deposits or accounts of which are insured by an agency of the United States, or from any financial institution the deposits or accounts of which are insured under the laws of any State if the total amount of time and savings deposits held in all such institutions in that State is more than 20 per centum of the total amount of such deposits in all banks, building and loan, savings and loan, and homestead associations (including cooperative banks) in that State or from any mortgage approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act [12 U.S.C. 1701 et seq.]. The Corporation may hold and deal with, and sell or otherwise dispose of, pursuant to commitments or otherwise, any such mortgage or interest therein, and the servicing on any such mortgage may be performed by the seller or by a financial institution qualified as a seller under the provisions of the preceding sentence, or by a mortgagee approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act, with which institution or mortgagee the seller may contract. The operations of the Corporation under this section shall be confined so far as practicable to residential mortgages which are deemed by the Corporation to be of such quality, type, and class as to meet generally the purchase standards imposed by private institutional mortgage investors. The Corporation may establish requirements, and impose charges or fees, which may be regarded as elements of pricing, for different classes of sellers or servicers, and for such purposes the Corporation is authorized to classify sellers or servicers according to type, size, location, assets, or, without limitation on the generality of the foregoing, on such other basis or bases of differentiation as the Corporation may consider necessary or appropriate to effectuate the purposes or provisions of this chapter. The Corporation may specify requirements concerning among other things, (A) minimum net worth; (B) supervisory mechanisms; (C) warranty compensation mechanisms; (D) prior approval of facilities; (E) prior origination and servicing experience with respect to different types of mortgages; (F) capital contributions and substitutes; (G) mortgage purchase volume limits; and (H) reduction of mortgage purchases during periods of borrowing. With respect to any particular type of seller, the Corporation shall not be required to make available programs involving prior approval of mortgages, optional delivery of mortgages, and purchase of other than conventional mortgages to an extent greater than the Corporation elects to make such programs available to other types of eligible sellers. Any requirements specified by the Corporation pursuant to the preceding three sentences must bear a rational relationship to the purposes or provisions of this chapter, but will not be considered discriminatory solely on the grounds of differential effects on types of eligible sellers. Insofar as is practicable, the Corporation shall make reasonable efforts to encourage participation in its programs by each type of eligible seller.

(2) No conventional mortgage shall be purchased under this section if the outstanding principal balance of the mortgage at the time of purchase exceeds 80 per centum of the value of the property securing the mortgage, unless (A) the seller retains a participation of not less than 10 per centum in the mortgage; (B) for such period and under such circumstances as the Corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the Corporation in the event that the mortgage is in default; or (C) that portion of the unpaid principal balance of the mortgage which is in excess of such 80 per centum is guaranteed or insured by a qualified insurer as determined by the Corporation. The Corporation shall not issue a commitment to purchase a conventional mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (A) of such sentence. The Corporation may purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller is currently engaged in mortgage lending or investing activities and if, as a result thereof, the cumulative aggregate of the principal balances

of all conventional mortgages purchased by the Corporation which were originated more than one year prior to the date of purchase does not exceed 20 per centum of the cumulative aggregate of the principal balances of all conventional mortgages purchased by the Corporation. The Corporation shall establish limitations governing the maximum principal obligation of conventional mortgages purchased by it, but such limitations shall not exceed by more than 25 per centum the limitations contained in the first proviso to the first sentence of section 1464(c) of this title.

[*See main edition for text of (3); (b)*]

(As amended Pub. L. 95-128, title IV, § 408(b), Oct. 12, 1977, 91 Stat. 1138; Pub. L. 95-557, title III, § 321(a), (b), Oct. 31, 1978, 92 Stat. 2101.)

REFERENCES IN TEXT

The National Housing Act, referred to in par. (11), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

"This chapter", referred to twice in subsec. (a)(1) as amended by Pub. L. 95-557, § 321, in the original read "this Act". Since Pub. L. 95-557, § 321, in its directory provisions amended the Federal Home Loan Mortgage Corporation Act, the words "this Act" have been construed as referring to the Federal Home Loan Mortgage Corporation Act which is title III of Pub. L. 91-351, which in turn comprises this chapter.

Federal savings and loan association, referred to in subsec. (b), deemed also a reference to Federal mutual savings bank, see section 1462 of this title.

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-557 inserted reference to any mortgage approved by the Secretary of Housing and Urban Development at the end of the first sentence, and added the last five sentences relating to imposition of charges or fees for different classes of sellers or servicers, etc.

1977—Subsec. (a)(2). Pub. L. 95-128 inserted in last sentence "by more than 25 per centum" following "exceed".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 321(c) of Pub. L. 95-557 provided: "The amendments [to subsec. (a)(1) of this section] made by this section shall become effective at the end of the two hundred and ten calendar days after enactment of this Act [Oct. 31, 1978], but not before January 31, 1979, or on such earlier date as the Federal Home Loan Mortgage Corporation may prescribe."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 1431, 1436, 1452, 1455, 1464, 1757 of this title.

§ 1455. Obligations and securities of the Corporation

[*See main edition for text of (a) to (d)*]

(e) Authority to purchase, hold, or invest by person, trust, or organization

(1) Any person, trust, or organization created pursuant to or existing under the laws of the United States or any State shall be authorized to purchase, hold, and invest in mortgages, obligations, or other securities which are or have been sold by the Corporation pursuant to this section or pursuant to section 1454 of this title to the same extent that such person, trust, or organization is authorized under any applicable law to purchase, hold, or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. Where State law limits the purchase, holding, or investment in obligations issued by the United States by such a person, trust, or organization, such Corporation mortgages, obligations, and other securities shall be considered to be obligations issued by the United States for purposes of the limitation.

(2) The provisions of paragraph (1) shall not apply with respect to a particular person, trust, or organization or class thereof in any State which, after December 21, 1979, enacts a statute which specifically names the Corporation and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by such person, trust, or organization or class thereof than is provided in paragraph (1). The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest which was made prior thereto.

(3) Any authority granted by paragraph (1) and not granted by any other Federal statute shall expire as of the end of June 30, 1985. Such expiration shall not affect the validity of any contractual commitment to purchase, hold, or invest which was made prior thereto pursuant to paragraph (1), and shall not affect the validity of any contractual commitment or other action to purchase, hold, or invest pursuant to any other authorization.

(As amended Pub. L. 96-153, title III, § 316(a), Dec. 21, 1979, 93 Stat. 1118.)

AMENDMENTS

1979—Subsec. (e). Pub. L. 96-153 added subsec. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 1431, 1436, 1452, 1464, 1757 of this title.

CHAPTER 12—FEDERAL SAVINGS AND LOAN ASSOCIATIONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 18 section 433; title 41 section 22.

§ 1462. Definitions

As used in this chapter—

[*See main edition for text of (a) to (c)*]

(d) The term "association" means a Federal savings and loan association or a Federal mutual savings bank chartered by the Board under section 1464 of this title, and any reference in any other law to a Federal savings and loan association shall be deemed to be also a reference to a Federal mutual savings bank, unless the context indicates otherwise.

(As amended Nov. 10, 1978, Pub. L. 95-630, title XII, § 1201, 92 Stat. 3710.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-630 included a Federal mutual savings bank chartered by the Board within

the definition of "association", and added provisions that a reference to a Federal savings and loan association shall be deemed also a reference to a Federal mutual savings bank.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630 set out as an Effective Date note under section 375b of this title.

§ 1464. Federal Savings and Loan Associations and Federal Mutual Savings Banks

(a) Organizations authorized

In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as "Federal Savings and Loan Associations", or "Federal mutual savings banks" (but only in the case of institutions which, prior to conversion, were State mutual savings banks located in States which authorize the chartering of State mutual savings banks, provided such conversion is not in contravention of State law), and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States. An association which was formerly organized as a savings bank under State law may not convert from the mutual to the stock form of ownership. An association which was formerly organized as a savings bank under State law may not convert from the mutual to the stock form of ownership.[1] An association which was formally organized as a savings bank under State law may, to the extent authorized by the Board, continue to carry on any activities it was engaged in on December 31, 1977, and to retain or make any investments of a type it held on that date, except that its equity, corporate bond, and consumer loan investments may not exceed the average ratio of such investments to total assets for the five-year period immediately preceding the filing of an application for conversion and such an association which was formerly organized as a savings bank under State law shall only be permitted to establish branch offices and other facilities in accordance with the limitations imposed by State law controlling applications of a savings bank organized under such State law, provided that such an association: (1) shall be exempt from any numerical limitations of State law on the establishment of branch offices and other facilities, and (2) may, in any case, subject to the approval of the Board, establish branch offices and other facilities in its own Standard Metropolitan Statistical Area, its own county or within thirty-five miles of its home office, but only in its State of domicile. An association which was formerly organized as a savings bank under State law shall be subject to the requirements of State law (including any regulations promulgated thereunder and any sanction for the violation of any such law or regulation) in effect at the time of conversion, in the State of its original charter—

(1) pertaining to discrimination in the extension of home mortgage loans or adjustment in the terms of mortgage instruments based on neighborhood or geographical area,

(2) pertaining to requirements imposed under the Consumer Credit Protection Act [15 U.S.C. 1601 et seq.],

if the Board determines that State law and regulations impose more stringent requirements than Federal law and regulations.

(b) Capital; members of the association; voting rights; payment of savings accounts and withdrawals; nontransferable orders or authorizations; authorization to borrow, give security, act as surety, and issue notes, bonds, debentures, or other obligations

(1) An association may raise capital in the form of such savings deposits, shares, or other accounts, for fixed, minimum, or indefinite periods of time (all of which are referred to in this section as savings accounts and all of which shall have the same priority upon liquidation) as are authorized by its charter or by regulations of the Board, and may issue such passbooks, time certificates of deposit, or other evidence of savings accounts as are so authorized. Holders of savings accounts and obligors of an association shall, to such extent as may be provided by its charter or by regulations of the Board, be members of the association, and shall have such voting rights and such other rights as are thereby provided. Except as may be otherwise authorized by the association's charter or regulation of the Board in the case of savings accounts for fixed or minimum terms of not less than thirty days, the payment of any savings account shall be subject to the right of the association to require such advance notice, not less than thirty days, as shall be provided for by the charter of the association or the regulations of the Board. The payment of withdrawals from savings accounts in the event an association does not pay all withdrawals in full (subject to the right of the association to require notice) shall be subject to such rules and procedures as may be prescribed by the association's charter or by regulation of the Board, but any association which, except as authorized in writing by the Board, fails to make full payment of any withdrawal when due shall be deemed to be in an unsafe or unsound condition to transact business within the meaning of subsection (d) of this section. Savings accounts shall not be subject to check or to withdrawal or transfer on negotiable or transferable order or authorization to the association, but the Board may by regulation provide for withdrawal or transfer of savings accounts upon nontransferable order or authorization. This section does not prohibit the establishment of remote service units by associations for the purpose of crediting existing savings accounts, debiting such accounts, crediting payments on loans, and the disposition of related financial transactions as provided in regulations prescribed by the Board.

[*See main edition for text of* (2)]

[1] So in original. Sentence repeated.

(3) Subject to regulation by the Board but without regard to any other provision of this subsection, any such association whose general reserves, surplus, and undivided profits aggregate a sum in excess of 5 per centum of its withdrawable accounts is authorized to borrow funds from a State mortgage finance agency of the State in which the head office of such association is situated to the same extent as State law authorizes a savings and loan association organized under the laws of such State to borrow from the State mortgage finance agency, except that such an association may not make any loan of such funds at an interest rate which exceeds by more than 1¾ per centum per annum the interest rate paid to the State mortgage finance agency on the obligations issued to obtain the funds so borrowed.

(c) Investment authority

An association may, to such extent, and subject to such rules and regulations as the Board may prescribe from time to time invest in, sell, or otherwise deal with the following loans, or other investments:

(1) Loans or investments without percentage of assets limitation

Without limitation as a percentage of assets, the following are permitted:

(A) Savings account loans

Loans on the security of its savings accounts.

(B) Single family and multifamily mortgage loans

Loans on the security of first liens upon residential real property within one hundred miles of its home office or within the State in which such home office is located; loans so secured shall not exceed $75,000 in principal amount (except that with respect to residential real estate in Alaska, Guam, and Hawaii the foregoing limitation may be increased by not to exceed 50 per centum) for each single family dwelling nor exceed such amount per room within the limits allowable (at the time of the loan) in section 207(c)(3) of the National Housing Act [12 U.S.C. 1713(c)(3)] for any other dwelling unit covered by such lien.

(C) United States Government securities

Investments in obligations of, or fully guaranteed as to principal and interest by, the United States.

(D) Federal Home Loan Bank and Federal National Mortgage Association securities

Investments in the stock or bonds of a Federal home loan bank or in the stock of the Federal National Mortgage Association.

(E) Federal Home Loan Mortgage Corporation instruments

Investments in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1454, 1455].

(F) Other Government securities

Investments in obligations, participations, securities, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, the Student Loan Marketing Association or the Government National Mortgage Association, or any other agency of the United States and an association may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act [12 U.S.C. 1721(g)].

(G) Bank deposits

Investments in the time deposits, certificates, or accounts of any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(H) State securities

Investments in general obligations of any State or any political subdivision thereof.

(I) Purchase of insured loans

Purchase subject to all the provisions of paragraph (1)(B), except the area restriction, loans secured by first liens on improved real estate which are insured under provisions of the National Housing Act [12 U.S.C. 1701 et seq.], or insured as provided in the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38.

(J) Home improvement and mobile home loans

Loans made for the repair, equipping, alteration, or improvement of any residential real property, and loans made for the purpose of mobile home financing.

(K) Insured loans to finance the purchase of fee simple

Loans as to which the association has the benefit of insurance under section 240 of the National Housing Act [12 U.S.C. 1715z-5], or of a commitment or agreement therefor.

(L) Loans to financial institutions, brokers, and dealers

Loans to financial institutions with respect to which the United States or an agency or instrumentality thereof has any function of examination or supervision, or to any broker or dealer registered with the Securities and Exchange Commission, secured by loans, obligations, or investments in which the association has the statutory authority to invest directly.

(M) Liquidity investments

Investments which, at the time of making, are assets eligible for inclusion toward the satisfaction of any liquidity requirement imposed by the Board pursuant to section 5A of the Federal Home Loan Bank Act [12 U.S.C. 1425a], but only to the extent that the investment is permitted to be so included under regulations of the Board or is otherwise authorized.

(N) Investment in the National Housing Partnership Corporation, partnerships, and joint ventures

Investments in shares of stock issued by a corporation authorized to be created pursu-

ant to title IX of the Housing and Urban Development Act of 1968 [42 U.S.C. 3931 et seq.], and investments in any partnership, limited partnership or joint venture formed pursuant to section 907(a) or 907(c) of that Act [42 U.S.C. 3937(a) or (c)].

(O) Housing and urban development guaranteed investments

Loans as to which the association has the benefit of any guaranty under title IV of the Housing and Urban Development Act of 1968 [42 U.S.C. 3901 et seq.] or under part B of the Urban Growth and New Community Development Act of 1970 [42 U.S.C. 4511 et seq.] or under section 802 of the Housing and Community Development Act of 1974 [42 U.S.C. 1440] as now or hereafter in effect, or of a commitment or agreement therefor.

(P) State housing corporation investments

Investments in, commitments to invest in, loans to, or commitments to lend to any State housing corporation, provided that such obligations or loans are secured directly, or indirectly through an agent or fiduciary, by a first lien on improved real estate which is insured under the provisions of the National Housing Act, as amended [12 U.S.C. 1701 et seq.], and that in the event of default, the holder of such obligations or loans would have the right directly, or indirectly through an agent or fiduciary, to cause to be subject to the satisfaction of such obligations or loans the real estate described in the first lien or the insurance proceeds under the National Housing Act.

(2) Loans or investments limited to 20 per centum of assets

The following loans or investments are permitted, but authority conferred in the following subparagraphs is limited to not in excess of 20 per centum of the assets of the association for each subparagraph:

(A) Other real estate loans

Loans on security of first liens upon improved real estate; but the amount deemed to be loaned in transactions which, except for excess in amount, would be eligible for such association under subparagraphs (1)(B) or (1)(I) shall be only the outstanding amount of such excess.

(B) Participation loans

Without regard to the area restriction contained in subparagraph (1)(B), investments for the making or purchase of participation interests in first liens on residential real property.

(3) Loans or investments limited to 5 per centum of assets

The following loans or investments are permitted, but the authority conferred in the following subparagraphs is limited to not in excess of 5 per centum of assets of the association for each subparagraph:

(A) Education loans

Loans made for the payment of expenses of college, university, or vocational education.

(B) Land acquisition

An association whose general reserves, surplus, and undivided profits aggregate a sum in excess of 5 per centum of its withdrawable accounts is authorized to invest in, subject to the area restriction contained in subparagraph (1)(B), loans to finance the acquisition and development of land for primary residential usage.

(C) Housing facilities for the aging

Subject to the area restriction contained in subparagraph (1)(B), amortized loans which are secured by first liens upon improved real estate used to provide housing facilities for the aging.

(D) Community development investments

Investments in real property and obligations secured by liens on real property located within a geographic area or neighborhood receiving concentrated development assistance by a local government under title I of the Housing and Community Development Act of 1974, as amended [42 U.S.C. 5301 et seq.] but no investment in real property may exceed an aggregate investment of 2 per centum of the assets of the association.

(E) Nonconforming loans

Loans upon the security of or respecting real property or interests therein used for primarily residential or farm purposes that do not comply with the limitations of this section.

(F) Construction loans, with or without security

Subject to the area restriction of subparagraph (1)(B), investments not exceeding the greater of (A) the sum of its surplus, undivided profits, and reserves or (B) 5 per centum of the assets of the association, in loans the principal purpose of which is to provide financing with respect to what is or is expected to become primarily residential real estate where (i) the association relies substantially for repayment on the borrower's general credit standing and forecast of income, with or without other security, or (ii) the association relies on other assurances for repayment, including but not limited to a guaranty or similar obligation of a third party, and, in either case described in clause (i) or (ii), regardless of whether or not the association takes security; and investments under this subsection shall not be included in any percentage of assets or other percentage referred to in this subsection.

(4) Other loans and investments

The following additional loans and other investments to the extent authorized below:

(A) Business development credit corporations

An association whose general reserves, surplus and undivided profits aggregate a

sum in excess of 5 per centum of its withdrawable accounts is authorized to invest in, lend to, or to commit itself to lend to, any business development credit corporation incorporated in the State in which the home office of the association is located in the same manner and to the same extent as savings and loan associations chartered by such State are authorized, but the aggregate amount of such investments, loans, and commitments of any such association shall not exceed one-half of 1 per centum of the total outstanding loans of the association or $250,000, whichever is less.

(B) Service corporations

Investments in the capital stock, obligations, or other securities of any corporation organized under the laws of the State in which the home office of the association is located, if the entire capital stock of such corporation is available for purchase only by savings and loan associations of that State and by Federal associations having their home offices therein, but no association may make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 1 per centum of the assets of the association.

(C) Foreign assistance, certain guaranteed loans

(i) Loans secured by mortgages as to which the association has the benefit of insurance under title X of the National Housing Act [12 U.S.C. 1749aa et seq.] or of a commitment or agreement for such insurance, or (ii) acquire and hold investments in housing project loans having the benefit of any guaranty under section 221 of the Foreign Assistance Act of 1961 [22 U.S.C. 2181] or loans having the benefit of any guaranty under section 224 of such Act [22 U.S.C. 2184], or any commitment or agreement with respect to such loans made pursuant to either of such sections and in the share capital and capital reserve of the Inter-American Savings and Loan Bank. This authority extends to the acquisition, holding, and disposition of loans having the benefit of any guaranty under section 221 or 222 of such Act [22 U.S.C. 2181 or 2182] as hereafter amended or extended, or of any commitment or agreement for any such guaranty. Investments under clause (i) of this subparagraph shall not be included in any percentage of assets or other percentage referred to in this section. Investments under clause (ii) of this subparagraph shall not exceed, in the case of any association, 1 per centum of the assets of such association.

(D) State and local government obligations

An association whose general reserves, surplus, and undivided profits aggregate a sum in excess of 5 per centum of its withdrawable accounts is authorized to invest in obligations which constitute prudent investments, as defined by the Board, of its home State and political subdivisions thereof (including any agency, corporation, or instrumentality): *Provided*, That the proceeds of such obligations are to be used for rehabilitation, financing, or the construction of residential real estate: *And provided further*, That the aggregate amount of all investments under this subparagraph shall not exceed the amount of the association's general reserves, surplus and undivided profits.

(E) Small business investment companies

An association may invest in stock, obligations, or other securities of any small business investment company formed pursuant to section 681(d) of title 15, for the purpose of aiding members of the Federal Home Loan Bank System, but no association may make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 1 per centum of the assets of such association.

(5) Converted State-chartered associations

Any association which is converted from a State-chartered institution may continue to make loans in the territory in which it made loans while operating under State charter.

(6) Definitions

As used in this section—

(A) the terms "residential real property" or "residential real estate" include leaseholds and mean homes (including condominiums and cooperatives except that in connection with loans on individual cooperative units, the first lien requirement shall not apply but such loans shall be adequately secured as defined by the Board), combinations of homes and business property, other dwelling units, or combinations of dwelling units including homes and business property involving only minor or incidental business use;

(B) the term "loans" includes obligations and extensions or advances of credit; and any reference to a loan or investment includes an interest in such a loan or investment; and

(C) the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, and any territory or possession of the United States.

(d) Proceedings to enforce compliance with law and regulations; cease and desist proceedings; temporary cease-and-desist orders; suspension or removal of directors or officers; appointment and removal of conservator or receiver; hearings and judicial review; regulations for reorganization, dissolutions, etc.; penalties; definitions; application to other institutions

[*See main edition for text of (1)*]

(2)(A) If, in the opinion of the Board, any association or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such association is engaging or has engaged, or the Board has reasonable cause to believe that the association or any director, officer, employee, agent, or other

person participating in the conduct of the affairs of such association is about to engage, in an unsafe or unsound practice in conducting the business of such association, or is violating or has violated or the Board has reasonable cause to believe that the association or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such association is about to violate, a law, rule, or regulation, or charter, or any condition imposed in writing by the Board in connection with the granting of any application or other request by the association or any written agreement entered into with the Board, the Board may issue and serve upon the association or such director, officer, employee, agent, or other person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the association or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such association. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Board at the request of any party so served. Unless the party or parties so served shall appear at the hearing by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the Board shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Board may issue and serve upon the association or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such association an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the association or its directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such association to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(B) A cease-and-desist order shall become effective at the expiration of thirty days after service of such order upon the association or the party or parties so served (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

(C) This paragraph and paragraphs (3), (4), (5), (7), (8), (9), (10), (12)(A) and (B), (13), and (14) of this subsection shall apply to any savings and loan holding company or to any subsidiary (other than an association) of a savings and loan holding company, as those terms are defined in section 408 of the National Housing Act (12 U.S.C. 1730a), as amended, and to any affiliate service corporation of an association in the same manner as they apply to an association.

(3)(A) Whenever the Board shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the association or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such association pursuant to paragraph (2)(A) of this subsection, or the continuation thereof, is likely to cause insolvency (as defined in paragraph (6)(A)(i) of this subsection) or substantial dissipation of assets or earnings of the association, or is likely to seriously weaken the condition of the association or otherwise seriously prejudice the interests of its savings account holders prior to the completion of the proceedings conducted pursuant to paragraph (2)(A) of this subsection the Board may issue a temporary order requiring the association or such director, officer, employee, agent, or other person to cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition or prejudice pending completion of such proceedings. Such order shall become effective upon service upon the association or such director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution and, unless set aside, limited, or suspended by a court in proceedings authorized by subparagraph (B) of this paragraph, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Board shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the association or such director, officer, employee, agent, or other person, until the effective date of such order.

(B) Within ten days after the association concerned or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such association has been served with a temporary cease-and-desist order, the association or such director, officer, employee, agent, or other person may apply to the United States district court for the judicial district in which the home office of the association is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the bank or such director, officer, employee, agent, or other person under paragraph (2)(A) of this subsection, and such court shall have jurisdiction to issue such injunction.

[*See main edition for text of* (C)]

(4)(A) Whenever, in the opinion of the Board, any director or officer of an association has committed any violation of law, rule, or regulation or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the association, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as

such director or officer, and the Board determines that the association has suffered or will probably suffer substantial financial loss or other damage or that the interests of its savings account holders could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, or that the director or officer has received financial gain by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, or a willful or continuing disregard for the safety or soundness of the association, the Board may serve upon such director or officer a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the association.

(B) Whenever, in the opinion of the Board, any director or officer of an association, by conduct or practice with respect to another savings and loan association or other business institution which resulted in substantial financial loss or other damage, has evidence either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, whenever, in the opinion of the Board, any other person participating in the conduct of the affairs of an association, by conduct or practice with respect to such association or other savings and loan association or other business institution which resulted in substantial financial loss or other damage, has evidence either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to participate in the conduct of the affairs of such association, the Board may serve upon such director, officer, or other person a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the association.

[*See main edition for text of (C) to (E)*]

(5)(A) Whenever any director or officer of an association, or other person participating in the conduct of the affairs of such association, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Board may, if continued service or participation by the individual may pose a threat to the interests of the association's depositors or may threaten to impair public confidence in the association, by written notice served upon such director, officer, or other person suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the association. A copy of such notice shall also be served upon the association. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Board. In the event that a judgment of conviction with respect to such crime is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Board may, if continued service or participation by the individual may pose a threat to the interests of the association's depositors or may threaten to impair public confidence in the association, issue and serve upon such director, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the association except with the consent of the Board. A copy of such order shall also be served upon such association, whereupon such director or officer shall cease to be a director or officer of such association. A finding of not guilty or other disposition of the charge shall not preclude the Board from thereafter instituting proceedings to remove such director, officer, or other person from office or to prohibit further participation in association affairs, pursuant to subparagraph (A), (B), or (C) of paragraph (4). Any notice of suspension or order of removal issued under this subparagraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under subparagraph (C) hereof unless terminated by the Board.

(B) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of an association less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of an association are suspended pursuant to this section, the Board shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the association and their respective successors take office.

(C) Within thirty days from service of any notice of suspension or order of removal issued pursuant to subparagraph (A), the director, officer, or other person concerned may request in writing an opportunity to appear before the Board to show that the continued service to or participation in the conduct of the affairs of the association by such individual does not, or is not likely to, pose a threat to the interests of the association's depositors or threaten to impair public confidence in the association. Upon receipt of any such request, the Board shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of the concerned director, officer, or other person) and place at which the director, officer, or other person may appear, personally or through counsel, before one or more members of the agency or designated employees of the Board to submit written materials (or, at the discretion of the agency, oral testimony) and oral argument. Within sixty days of such hearing, the Board shall notify the director, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the

association will be continued, terminated or otherwise modified, or whether the order removing said director, officer, or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the association will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Board's decision, if adverse to the director, officer, or other person. The Board is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

[*See main edition for text of* (6)]

(7)(A) Any hearing provided for in this subsection (d) (other than the hearing provided for in paragraph (5)(C) of this subsection) shall be held in the Federal judicial district or in the territory in which the home office of the association is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5. Such hearing shall be private, unless the Board, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After such hearing, and within ninety days after the Board has notified the parties that the case has been submitted to it for final decision, the Board shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this subsection. Judicial review of any such order shall be exclusively as provided in this paragraph (7). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in subparagraph (B) of this paragraph, and thereafter until the record in the proceeding has been filed as so provided, the Board may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Board may modify, terminate, or set aside any such order with permission of the court.

[*See main edition for text of* (B) *and* (C)]

(8)(A) The Board may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the association is located, for the enforcement of any effective and outstanding notice or order issued by the Board under this subsection (d), and such courts shall have jurisdiction and power to order and require compliance therewith; but except as otherwise provided in this subsection no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this subsection, or to review, modify, suspend, terminate, or set aside any such notice or order. Any court having jurisdiction of any proceeding instituted under this subsection by an association or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the association or from its assets.

(B)(i) Any association which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such an association who violates the terms of any order which has become final and was issued pursuant to paragraph (2) or (3) of this subsection, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Board by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(ii) In determining the amount of the penalty the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the association bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(iii) The association or person charged shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (iv). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(iv) Any association or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the association is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Board. The agency shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28. The findings of the agency shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5.

(v) If any association or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(vi) The Board shall promulgate regulations establishing procedures necessary to implement this paragraph.

(vii) All penalties collected under authority of this paragraph shall be covered into the Treasury of the United States.

[*See main edition for text of (9) to (11)*]

(12)(A) Any director or officer, or former director or officer, of an association, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under paragraph (4)(C), (4)(D), (5)(A), or (5)(C) of this subsection, and who (i) participates in any manner in the conduct of the affairs of such association, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations in respect of any voting rights in such association, or (ii) without the prior written approval of the Board, votes for a director or serves or acts as a director, officer, or employee of any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.

[*See main edition for text of (B) and (C)*]

(13)(A) As used in this subsection—

(1) The terms "cease-and-desist order which has become final" and "order which has become final" mean a cease-and-desist order, or an order, issued by the Board with the consent of the association or the director or officer or other person concerned, or with respect to which no petition for review of the action of the Board has been filed and perfected in a court of appeals as specified in paragraph (7)(B) of this subsection, or with respect to which the action of the court in which said petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in said paragraph, or an order issued under paragraph (5)(A) or (C) of this subsection.

[*See main edition for text of (2) to (4), (B); (14)*]

(15) For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term "officer" as used in this subsection means an employee or officer with management functions, and the term "director" includes an advisory or honorary director, a trustee of an association under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

[*See main edition for text of (e) to (h)*]

(i) Conversion of member of Federal Home Loan Bank into Federal Savings and Loan Association; conversion of Federal Savings and Loan Association into State-chartered institution

Any member of a Federal Home Loan Bank (including a savings bank) may convert itself into a Federal savings and loan association under this chapter upon a vote of 51 per centum or more of the votes cast at a legal meeting called to consider such action; but such conversion shall be subject to such rules and regulations as the Board may prescribe, and thereafter the converted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this chapter.

[*See main edition for text of second and third unnumbered paragraphs; (j)*]

(k) Federal savings and loan associations or Federal Home Loan Banks as fiscal agents of United States

When designated for that purpose by the Secretary of the Treasury, any Federal savings and loan association or member of any Federal Home Loan Bank shall be a depositary of public money and may be employed as fiscal agent of the Government under such regulations as may be prescribed by said Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. Any Federal savings and loan association or member of any Federal Home Loan Bank may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality of the United States, including services in connection with the collection of taxes and other obligations owed the United States, and the Secretary of the Treasury is authorized to deposit public money in any such Federal savings and loan association or member of a Federal home loan bank, and shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

(l) Association as trustee of trust respecting stock bonus, pension, or profit-sharing plans

Any such association is authorized to act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan which qualifies or qualified for specific tax treatment under section 401(d) of the Internal Revenue Code of 1954 [26 U.S.C. 401(d)] and to act as trustee or custodian of an individual retirement account within the meaning of section 408 of such Code [26 U.S.C. 408], if the funds of such trust or account are invested only in savings accounts or deposits in such association or in obligations or securities issued by such association. All funds held in such fiduciary capacity by any such association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under the authority of this paragraph.

(m) Approval required for establishment or movement of principal or branch offices of District of Columbia associations

No building and loan association incorporated under the laws of the District of Columbia or organized in such District or doing business in such District shall establish any branch or move its principal office or any branch without the prior written approval of the Federal Home Loan Bank Board, and no other building and loan association shall establish any branch in such District or move its principal office or any branch in such District without such approval. As used in the sentence next preceding, "branch" means any office, place of business, or

facility, other than the principal office as defined by the Board, of a building and loan association at which accounts are opened or payments thereon are received or withdrawals therefrom are paid, or any other office, place of business, or facility of a building and loan association defined by the Board as a branch within the meaning of such sentence, and as used in such sentence and in this sentence "building and loan association" means any incorporated or unincorporated building, building or loan, building and loan, savings and loan, or homestead association or cooperative bank.

(As amended Oct. 12, 1977, Pub. L. 95-128, title IV, §§ 401-405, 91 Stat. 1136, 1137; Oct. 28, 1977, Pub. L. 95-147, § 2(a), 91 Stat. 1227; Nov. 10, 1978, Pub. L. 95-630, title I, §§ 107(a)(3), (c)(3), (d)(3), (e)(3), 111(c), title II, § 208(b), title XII, §§ 1202, 1204, title XVII, § 1701, 92 Stat. 3651, 3655, 3659, 3662, 3668, 3675, 3710, 3711, 3714; Dec. 21, 1979, Pub. L. 96-153, title III, §§ 325, 326, 93 Stat. 1121; Dec. 28, 1979, Pub. L. 96-161, title I, § 102, 93 Stat. 1233.)

REFERENCES IN TEXT

The Consumer Credit Protection Act, referred to in subsec. (a)(1), is act May 29, 1968, Pub. L. 90-321, 82 Stat. 146, as amended, which is classified principally to chapter 41 (§ 1601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The National Housing Act, as amended referred to in subsec. (c)(1)(I), (P), (4)(C), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of this title. Title X of the National Housing Act, referred to in subsec. (c)(4)(C), is title X of act June 27, 1934, ch. 847, as added by act Aug. 10, 1965, Pub. L. 89-117, title II, § 201(a), 79 Stat. 461, which is classified generally to subchapter IX-A (§ 1749aa et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

The Servicemen's Readjustment Act of 1944, referred to in subsec. (c)(1)(I), is act June 22, 1944, ch. 268, 58 Stat. 284, as amended, which was classified generally to chapter 11C (§§ 693 to 697g) of former Title 38, Pensions, Bonuses, and Veterans' Relief, which was repealed upon the enactment of Title 38, Veterans' Benefits, by Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1105. For distribution of sections 693 to 697g of former Title 38 to Title 38, Veterans' Benefits, see Table preceding section 101 of Title 38, Veterans' Benefits.

The Housing and Urban Development Act of 1968, as amended, referred to in subsec. (c)(1)(N), (O), is Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 476, as amended. Titles IV and IX of the Housing and Urban Development Act of 1968, as amended, are classified principally to chapters 48 (§ 3901 et seq.) and 49 (§ 3931 et seq.), respectively, of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 1701 of this title and Tables.

The Urban Growth and New Community Development Act of 1970, as amended referred to in subsec. (c)(1)(O), is Pub. L. 91-609, title VII, Dec. 31, 1970, 84 Stat. 1791, as amended. Part B of the Urban Growth and New Community Development Act of 1970 is classified generally to part B (§ 4511 et seq.) of chapter 59 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4501 of Title 42 and Tables.

Section 802 of the Housing and Community Development Act of 1974, referred to in subsec. (c)(1)(O), enacted section 1440 of Title 42, The Public Health and Welfare, and amended sections 371 and 1464 of this title.

The Housing and Community Development Act of 1974, as amended, referred to in subsec. (c)(3)(D), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§ 5301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42 and Tables.

Section 224 of such Act [22 U.S.C. 2184], meaning section 224 of the Foreign Assistance Act of 1961, referred to in subsec. (c)(4)(C), which related to housing projects in Latin American countries, was eliminated in the general amendment made by section 105 of the Foreign Assistance Act of 1969 (Pub. L. 91-175), and is now covered by section 222 of such Act [22 U.S.C. 2182].

Federal savings and loan association, referred to in subsecs. (d)(14), (i), (j), and (k), deemed also a reference to Federal mutual savings bank, see section 1462 of this title.

AMENDMENTS

1979—Subsec. (b)(1). Pub. L. 96-161 provided that this section does not prohibit the establishment of remote service units by associations for the purpose of crediting existing savings accounts, debiting such accounts, crediting payments on loans, and the disposition of related financial transactions as provided in regulations prescribed by the Board.

Subsec. (c)(1)(B). Pub. L. 96-153, § 326 substituted "$75,000" for "$60,000".

Subsec. (c)(4)(E). Pub. L. 96-153, § 325 added subsec. (c)(4)(E).

1978—Subsec. (a). Pub. L. 95-630, § 1202, added provisions relating to the authority of the Federal Home Loan Bank Board to allow a State-chartered mutual savings bank to convert to a Federal charter and be known as a Federal mutual savings bank.

Subsec. (b)(3). Pub. L. 95-630, § 1701(b), redesignated as subsec. (b)(3), the provisions which were formerly contained in undesignated paragraph 23 of subsec. (c) of this section.

Subsec. (c). Pub. L. 95-630, § 1701, simplified the investment authority for Federal savings and loan associations and provided such associations with more authority to invest in urban areas and transferred provisions of formerly undesignated paragraphs 15, 17, and 23 of this section to subsecs. (m), (*l*), and (b)(3) of this section, respectively.

Subsec. (d)(2). Pub. L. 95-630, § 107(a)(3), in subpar. (A) extended coverage of provisions to include directors, officers, employees, agents, or other persons participating in the conduct of the affairs of any association and added subpar. (C).

Subsec. (d)(3). Pub. L. 95-630, § 107(c)(3), in subpars. (A) and (B) added references to any director, officer, employee, agent, or other person participating in the conduct of the affairs of the association and in subpar. (A) inserted "prior to the completion of the proceedings conducted pursuant to paragraph (2)(A) of this sub-subsection" following "savings account holders" and "and to take affirmative action to prevent such insolvency, dissipation, condition or prejudice pending completion of such proceedings" following "violation or practice".

Subsec. (d)(4)(A). Pub. L. 95-630, § 107(d)(3), inserted "or that the director or officer has received financial gain by reason of such violation or practice or breach of fiduciary duty" preceding ", and that such violation", ", or a willful or continuing disregard for the safety or soundness of the association" following "the part of such director or officer", and "or to prohibit his further participation in any manner in the conduct of the affairs of the association" following "remove him from office".

Subsec. (d)(4)(B). Pub. L. 95-630, § 107(d)(3), inserted references to a willful or continuing disregard for its safety and soundness in two places.

Subsec. (d)(5). Pub. L. 95-630, § 111(c)(1), among other changes, in subpar. (A) substituted "crime" for "felony" in two places and "subparagraph (A), (B), or (C)" for "subparagraph (A) or (B)", inserted "which is punishable by imprisonment for a term exceeding one year under State or Federal law" following "or breach of trust" and ", if continued service or participation by the individual may pose a threat to the interests of the association's depositors or may threaten to impair public confidence in the association" following "the Board may" in two places, and added provision that any notice of suspension or order of removal issued under this subparagraph remain effective and outstanding until the completion of any hearing or appeal authorized under subparagraph (C) hereof unless terminated by the Board, and added subpar. (C).

Subsec. (d)(7)(A). Pub. L. 95-630, § 111(c)(2), inserted "(other than the hearing provided for in paragraph (5)(C) of this subsection" following "provided for in this subsection (d)".

Subsec. (d)(8). Pub. L. 95-630, § 107(e)(3), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d)(12)(A). Pub. L. 95-630, § 111(c)(3), substituted "(5)(A), or (5)(C)" for "or (5)(C)".

Subsec. (d)(13)(A)(1). Pub. L. 95-630, § 111(c)(4), inserted "or (C)" following "paragraph (5)(A)".

Subsec. (d)(15). Pub. L. 95-630, § 208(b), added subsec. (d)(15).

Subsec. (i). Pub. L. 95-630, § 1204, inserted "(including a savings bank)" following "member of a Federal Home Loan Bank" in the first par.

Subsec. (*l*). Pub. L. 95-630, § 1701(b), redesignated as subsec. (*l*), the provisions which were formerly contained in undesignated paragraph 17 of subsec. (c) of this section.

Subsec. (m). Pub. L. 95-630, § 1701(b), redesignated as subsec. (m), the provisions which were formerly contained in undesignated paragraph 15 of subsec. (c) of this section.

1977—Subsec. (c), first par. Pub. L. 95-128, §§ 402, 405, in first proviso, increased limitation on loans for single family dwellings to $60,000 from $55,000 and inserted "but of said 20 per centum the amount deemed to be loaned in transactions which, except for excess in amount, would be eligible for such association under provisions of this sentence (other than this exception) or under the next following sentence shall be only the outstanding amount of such excess," following "improved real estate without regard to the foregoing limitations,"; and struck out ", and the Board shall by regulation limit to not more than 20 per centum of the assets of the association the aggregate amount or amounts of the investments which may be made by an association under the foregoing provisions of this sentence on the security of property which comprises or includes more than four dwelling units or does not constitute homes or combinations of homes and business property" preceding "; except".

Subsec. (c), second and third pars. Pub. L. 95-128, § 404, increased limitation on loans to $15,000 from $10,000.

Subsec. (c), twenty-first par. Pub. L. 95-128, § 401, increased the rate to 5 from 3 per centum.

Subsec. (c), twenty-second par. Pub. L. 95-128, § 403, authorized use of real property or interests for farm purposes.

Subsec. (k). Pub. L. 95-147 inserted "shall be a depositary of public money and" following "Federal Home Loan Bank" and ", including services in connection with the collection of taxes and other obligations owed the United States, and the Secretary of the Treasury is hereby authorized to deposit public money in any such Federal savings and loan association or member of a Federal home loan bank, and shall prescribe such regulations as may be necessary to carry out the purposes of this subsection" following "instrumentality of the United States".

EFFECTIVE AND TERMINATION DATES OF 1979 AMENDMENT

Amendment by Pub. L. 96-161, amending subsec. (b)(1) of this section, effective Dec. 31, 1979, with that amendment to remain in effect until the close of Mar. 31, 1980, see section 104 of Pub. L. 96-161, set out as an Effective and Termination Dates of 1979 Amendment note under section 371a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (a), (b), and (d) (except (d)(8)) of this section effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630 set out as an Effective Date note under section 375b of this title.

Amendment of subsecs. (b)(3), (c), (*l*), and (m) by section 1701 of Pub. L. 95-630 effective Nov. 10, 1978, see section 1703 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 1451 of this title.

Amendment of subsec. (d)(8) by section 107(e)(3) of Pub. L. 95-630, relating to imposition of civil penalties, applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 93 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1430, 1454, 1462, 1465, 1466a, 1717, 1725, 1729, 2804, 2805 of this title; title 15 sections 18a, 57a, 1607, 1681s, 1691c, 1692*l*, 1693*o*.

§ 1466a. District of Columbia Savings and Loan Associations

REFERENCES IN TEXT

Federal savings and loan association, referred to in subsecs. (a), (b), and (d), deemed also a reference to Federal mutual savings bank, see section 1462 of this title.

§ 1469. Authority to invest in state housing corporations

REFERENCES IN TEXT

Federal savings and loan association, referred to in text, deemed also a reference to Federal mutual savings bank, see section 1462 of this title.

CHAPTER 13—NATIONAL HOUSING

Sec.
1701z-9. Expansion of home ownership opportunities in urban areas [New].
1701z-10. Model rehabilitation guidelines in inspection and approval of rehabilitated properties; report to Congress [New].
1701z-11. Management and disposal of multifamily housing projects [New].
(a) Purpose and policy of United States.
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(a) Authority of Association; termination of activities.
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(b) Transactions involving insured loans and advances of credit; conditions of purchase.
(c) Issuance of obligations to Secretary of Treasury.
(d) Application of local usury and other laws.
(e) Sale of loans and advances of credit; payment for services.
(f) Maximum amount of outstanding purchases and commitments.
(g) Establishment of purchase price for loans and advances of credit.
(h) Purchase with recourse.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 371, 1430, 1454, 1464, 1701z–7, 1701z–11, 1709a, 1715z–1a, 2710 of this title; title 7 section 1933; title 11 section 362; title 15 section 77ddd; title 38 section 1804; title 40 section 474; title 42 sections 1437f, 1490a, 2322, 3012; title 48 section 1425.

§ 1701. Short title

SHORT TITLE OF 1979 AMENDMENT

Pub. L. 96–153, Title III, § 311(a), Dec. 21, 1979, 93 Stat. 1115, provided that: "This section [amending section 1715z–10 of this title] may be cited as the 'Homeownership Opportunity Act of 1979'."

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–630, title VII, § 701, Nov. 10, 1978, 92 Stat. 3687, provided that: "This title [which amended section 1730 of this title] may be cited as the 'Change in Savings and Loan Control Act of 1978'."

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–24, § 1, Apr. 30, 1977, 91 Stat. 55, provided: "That this Act [which amended sections 1706e, 1715k, 1715*l*, 1735c, 1749bbb, and 1749bbb–8 of this title and sections 1437c, 1437f, 1437g, and 1451 of Title 42, The Public Health and Welfare, and enacted provisions set out as a note under section 1441 of Title 42] may be cited as the 'Supplemental Housing Authorization Act of 1977'."

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89–429, § 1, May 24, 1966, 80 Stat. 164, provided: "That this act [enacting section 745 of Title 20, Education, amending sections 1717, 1720(c), 1749(d), and 1757(7) of this title, section 1988(c) of Title 7, Agriculture, and section 743(c) of Title 20, and enacting material set out as a note under section 1717 of this title and section 262 of former Title 5, Executive Departments and Government Officers and employees] may be cited as the 'Participation Sales Act of 1966'."

SHORT TITLE OF 1950 AMENDMENT

Act Apr. 20, 1950, ch. 94, § 1, 64 Stat. 48, provided that "This Act [which enacted sections 1701j to 1701*l*, 1715e, 1715f, and 1749 to 1749c of this title and sec-

tions 1581 to 1589 and 1590 of Title 42, The Public Health and Welfare; amended sections 371, 1430, 1701c, 1703, 1705, 1706, 1706b, 1706c, 1707 to 1709, 1710 to 1715, 1715b, 1715c, 1716, 1717, 1720, 1721, 1736 to 1746, 1747 to 1747c, and 1747e to 1747*l* of this title, section 1017 of Title 7, Agriculture, section 604 of Title 15, Commerce and Trade, and sections 1412, 1521 to 1524, 1532, 1533, 1542 to 1548, 1552, 1553, 1561, 1571, 1572, and 1575 of Title 42; and enacted provisions set out as notes under sections 1701, 1701k, 1703, and 1709 of this title, section 1017 of Title 7, and section 1412 of Title 42] may be cited as the Housing Act of 1950".

§ 1701j–2. National Institute of Building Sciences

[*See main edition for text of* (*a*) *to* (*g*)]

(h) Authorization of appropriations

There is authorized to be appropriated to the Institute not to exceed $5,000,000 for the fiscal year 1975, and $5,000,000 for the fiscal year 1976, and $5,000,000 for each of the fiscal years 1977 and 1978, and any amounts not appropriated in fiscal years 1977 and 1978 may be appropriated in any fiscal year through 1982 (with each appropriation to be available until expended), to provide the Institute with initial capital adequate for the exercise of its functions and responsibilities during such years; and thereafter the Institute shall be financially self-sustaining through the means described in subsection (f) of this section.

[*See main edition for text of* (*i*)]

(As amended Pub. L. 95–557, title III, § 319, Oct. 31, 1978, 92 Stat. 2101.)

AMENDMENTS

1978—Subsec. (h). Pub. L. 95-557 added ", and any amounts not appropriated in fiscal years 1977 and 1978 may be appropriated in any fiscal year through 1982" following "1978".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 sections 1452b, 6832.

§ 1701q. Loans for housing and related facilities for elderly or handicapped families

(a) Purpose; authorization; amount; terms and conditions; revolving fund; issuance of obligations; aggregate amount; purchase and sale by Secretary of Treasury; public debt transactions; availability of fund; servicing of mortgage loans; criteria for review of applications; technical and training assistance

[*See main edition for text of* (*1*) *to* (*3*)]

(4) [*See main edition for text of* (*A*)]

(B)(i) To carry out the purposes of this section, the Secretary is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount not to exceed $1,475,000,000, which amount shall be increased to $2,387,500,000 on October 1, 1977, to $3,300,000,000 on October 1, 1978, to $3,827,500,000 on October 1, 1979, to $4,777,500,000 on October 1, 1980, and to $5,752,500,000 on October 1, 1981 in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt, computed at the end of the fiscal year next preceding the date on which the loan is made. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act; and the purposes for which securities may be issued under that Act are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. The Secretary may not issue notes or other obligations to the Secretary of the Treasury pursuant to this section in an aggregate amount, exceeding $800,000,000 except as approved in appropriation Acts.

[*See main edition for text of* (*ii*)]

(C) Amounts in the fund shall be available to the Secretary for the purpose of making loans under this section and for paying interest on obligations issued under subparagraph (B). The aggregate loans made under this section shall not exceed the limits on such lending authority established in appropriation Acts.

[*See main edition for text of* (*5*)]

(6) In reviewing applications for loans under this section, the Secretary may consider the extent to which such loans—

(A) will assist in stabilizing, conserving, and revitalizing neighborhoods and communities;

(B) will assist in providing housing for elderly and handicapped families in neighborhoods and communities in which they are experiencing significant displacement due to public or private investment; or

(C) will assist in the substantial rehabilitation, in an economical manner, of structures having architectural, historical, or cultural significance.

(7) The Secretary may make available appropriate technical and training assistance to assure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the program carried out under this section.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Definitions

As used in this section—

[*See main edition for text of* (*1*)]

(2) The term "corporation" means any incorporated private institution or foundation—

(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(B) which has a governing board (i) the membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such project is located, and (ii) which is responsible for the operation of the housing project assisted under this section; and

(C) which is approved by the Secretary as to financial responsibility.

(3) The term "development cost" means costs of construction of housing and of other related facilities, the cost of movables necessary to the basic operation of the project as determined by the Secretary, and of the land on which it is located, including necessary site improvement, which cost shall be determined without regard to mortgage limits applicable to housing projects subject to mortgages insured under section 231 of the National Housing Act [12 U.S.C. 1715v].

[*See main edition for text of* (4) *to* (7)]

(8) The term "related facilities" means (A) new structures suitable for use by elderly or handicapped families residing in the project or in the area as cafeterias or dining halls, community rooms or buildings, workshops, adult day health facilities, or other outpatient health facilities, or other essential service facilities, and (B) structures suitable for the above uses provided by rehabilitation, alteration, conversion, or improvements of existing structures which are otherwise inadequate for such uses.

[*See main edition for text of* (e)]

(f) Assurance by Secretary of applicable State and local plans responding to Federal program requirements for assisted housing and related facilities

In carrying out the provisions of this section, the Secretary shall seek to assure, pursuant to applicable regulations, that housing and related facilities assisted under this section will be in appropriate support of, and supported by, applicable State and local plans which respond to Federal program requirements by providing an assured range of necessary services for individuals occupying such housing (which services may include, among others, health (including adult day health services), continuing education, welfare, informational, recreational, homemaker, counseling, and referral services, transportation where necessary to facilitate access to social services, and services designed to encourage and assist recipients to use the services and facilities available to them), including plans approved by the Secretary of Health, Education, and Welfare pursuant to section 134 of the Mental Retardation Facilities and Community Mental Health Center Construction Act of 1963 [42 U.S.C. 6063] or pursuant to title III of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq.].

(g) Regulations; coordination of applications for loans under this section and section 1437f of title 42; adjustment of assistance

In carrying out the provisions of this section and section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], the Secretary shall issue and implement regulations, as soon as practicable after October 12, 1977, which shall provide that the processing of any application for a loan for a project under this section and the processing of any application for assistance under such section 8 [42 U.S.C. 1437f] with respect to housing units in the same such project shall be coordinated in an economical and efficient manner. At the time of settlement on permanent financing with respect to a project under this section, the Secretary shall make an appropriate adjustment in the amount of any assistance to be provided under a contract for annual contributions pursuant to section 8 of the United States Housing Act of 1937 in order to reflect fully any difference between the interest rate which will actually be charged in connection with such permanent financing and the interest rate which was in effect at the time of the reservation of assistance in connection with the project.

(h) Loans for development of rental housing and facilities for handicapped

Of the amounts made available in appropriation Acts for loans pursuant to subsection (a)(4)(C) of this section for the fiscal year commencing on October 1, 1978, not less than $50,000,000 shall be available for loans for the development of rental housing and related facilities specifically designed to meet the needs of handicapped (primarily nonelderly) persons. The Secretary shall take such steps as may be necessary to assure that—

(1) funds made available pursuant to this subsection will be used to support innovative methods of meeting the needs of handicapped persons by providing a variety of housing options, ranging from small group homes to independent living complexes; and

(2) housing and related facilities assisted under this subsection will provide handicapped persons occupying units within such housing with an assured range of services specified under subsection (f) of this section and the opportunity for optimal independent living and participation in normal daily activities, and will facilitate access by such persons to the community at large and to suitable employment opportunities within such community.

(As amended Pub. L. 95-128, title II, § 202, Oct. 12, 1977, 91 Stat. 1129; Pub. L. 95-557, title II, § 205, Oct. 31, 1978, 92 Stat. 2090; Pub. L. 96-153, title III, § 306(a)-(d), Dec. 21, 1979, 93 Stat. 1112.)

AMENDMENTS

1979—Subsec. (a)(4)(B)(i). Pub. L. 96-153, § 306(a), provided for increase of notes or other obligations to $3,827,500,000 on October 1, 1979, to $4,777,500,000 on October 1, 1980, and to $5,752,500,000 on October 1, 1981.

Subsec. (A)(6), (7). Pub. L. 96-153, § 306(b), added subsecs. (a)(6) and (7).

Subsec. (d)(8)(A). Pub. L. 96-153, § 306(c)(1), substituted "adult day health facilities, or other" for "or infirmaries or other inpatient or".

Subsec. (f). Pub. L. 96-153, § 306(c)(2), added reference to adult day health services.

Subsec. (g). Pub. L. 96-153, § 306(d), added provisions that at the time of settlement on permanent financ-

ing, the Secretary make appropriate adjustment in the amount of assistance to be provided under a contract for annual contributions pursuant to section 8 of the United States Housing Act of 1937 reflecting the difference between interest rate which will actually be charged in connection with such permanent financing and the interest rate which was in effect at the time of the reservation of assistance in connection with the project.

1978—Subsec. (a)(4)(C). Pub. L. 95-557, § 205(b), struck out "in any fiscal year" following "The aggregate loans made under this section", and "for such year" following "lending authority established".

Subsec. (d)(2). Pub. L. 95-557, § 205(d), designated provisions beginning "no part of" as par. (A), and in par. (A) as so designated, substituted "member, founder, contributor, or individual" for "private shareholder, contributor, or individual, if such institution or foundation is approved by the Secretary as to financial responsibility" and added pars. (B) and (C).

Subsec. (d)(3). Pub. L. 95-557, § 205(c), added "the cost of movables necessary to the basic operation of the project as determined by the Secretary," following "related facilities".

Subsec. (h). Pub. L. 95-557, § 205(a), added subsec. (h).

1977—Subsec. (d)(3). Pub. L. 95-128, § 202(a), provided for determination of "development cost" without regard to mortgage limits applicable to housing projects subject to mortgages insured under section 1715v of this title.

Subsec. (g). Pub. L. 95-128, § 202(b), added subsec. (g).

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

REPORTS RESPECTING ELDERLY AND HANDICAPPED HOUSING PROGRAMS IN RURAL AREAS, ETC.

Section 306 (e) and (f) of Pub. L. 96-153 provided that:

"(e) Not later than six months after the date of enactment of this Act [Dec. 21, 1979], the Secretary of Housing and Urban Development shall transmit a report to the Congress on the housing needs of the elderly and handicapped in rural areas. Such report shall at least include—

"(1) an assessment of the operations of the present programs in rural areas available to the elderly and handicapped;

"(2) an assessment of the housing needs of the elderly and handicapped living in rural areas; and

"(3) an examination of the various alternatives available to meet the housing needs of the elderly and handicapped in rural areas.

"(f) Not later than six months after the date of enactment of this Act [Dec. 21, 1979], the Secretary of Housing and Urban Development shall transmit a report to the Congress containing recommendations on means to reduce the costs of the program carried out under section 202 of the Housing Act of 1959 [this section] without—

"(1) unduly burdening sponsors of programs and projects under this section; or

"(2) adversely affecting the ability of the program under this section to meet the housing needs of elderly and handicapped families."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1701s, 1701z-13, 1715*l*, 1715v, 1715z-1 of this title; title 42 sections 1402, 1436, 1437c, 1437f, 1438, 1439, 1485, 3013, 8002, 8008, 8009, 8231.

§ 1701s. Rent supplement payments for lower income families who are elderly, handicapped, victims of natural disaster, or occupants of substandard housing

[*See main edition for text of (a) and (b)*]

(c) Definitions

As used in this section, the term—

(1) "qualified tenant" means any individual or family having an income which would qualify such individual or family for assistance under section 1437f of title 42, except that such term shall also include any individual or family who was receiving assistance under this section on the day preceding December 21, 1979, so long as such individual or family continues to meet the conditions for such assistance which were in effect on such day; and

(2) "income" means income as determined under section 1437f of title 42.

The terms "qualified tenant" and "tenant" include a member of a cooperative who satisfies the foregoing requirements and who, upon resale of his membership to the cooperative, will not be reimbursed for any equity increment accumulated through payments under this section. With respect to members of a cooperative, the terms "rental" and "rental charges" mean the charges under the occupancy agreements between such members and the cooperative.

(d) Maximum amount of annual payment

The amount of the annual payment with respect to any dwelling unit shall not exceed the amount by which the fair market rental for such unit exceeds one-fourth of the tenant's income as determined by the Secretary pursuant to procedures and regulations established by the Secretary. Notwithstanding the preceding sentence, the amount of the payment made under any contract amended pursuant to subsection (j) of this section with respect to any dwelling unit assisted under this section shall be determined in the same manner as it would be determined under section 1437f of title 42 if the tenant on whose behalf such payment is made were receiving assistance with respect to such unit under section 1437f of title 42.

(e) Criteria and procedure for determining eligibility and rental charges; certificates as to facts concerning applicant; recertification of income; agreements for services required in selection of tenants; delegation of authority to issue certificates

(1) For purposes of carrying out the provisions of this section, the Secretary shall establish criteria and procedures for determining the eligibility of occupants and rental charges, including criteria and procedures with respect to periodic review of tenant incomes and periodic adjustment of rental charges. The Secretary shall issue, upon the request of a housing owner, certificates as to the following facts concerning the individuals and families applying for admission to, or residing in, dwellings of such owner:

(A) the income of the individual or family; and

(B) whether the individual or family was occupying substandard housing or was involun-

tarily displaced at the time it was seeking assistance under this section.

[*See main edition for text of (2) to (4); (f) to (h)*]

(i) Priorities for assistance

In making assistance available under this section, the Secretary shall give priority to individuals or families who are occupying substandard housing or are involuntarily displaced at the time they are seeking housing assistance under this section.

(j) Amendment of contracts

The Secretary may offer to amend each contract entered into pursuant to this section for the purpose of making such contract contain such terms and conditions as the Secretary deems necessary to implement the amendments made to this section by the Housing and Community Development Amendments of 1979. Notwithstanding the provisions of subsection (a) of this section and any other provision of law, the Secretary may utilize additional authority under section 1437c(c) of title 42 made available by appropriation Acts on or after October 1, 1979, in order to carry out any changes in contracts as a result of the preceding sentence to the extent necessary to supplement assistance authority available for that purpose under this section.

(Pub. L. 89-117, title I, § 101(a)-(e), (g), (h), (j)-(*l*), Aug. 10, 1965, 79 Stat. 451-453; Pub. L. 90-19, § 22(a), (c), May 25, 1967, 81 Stat. 26; Pub. L. 90-448, title II, §§ 201(e), 202, title XI, § 1106(b), Aug. 1, 1968, 82 Stat. 502, 503, 567; Pub. L. 91-152, title I, § 112, Dec. 24, 1969, 83 Stat. 383; Pub. L. 91-609, title I, §§ 103, 114[115](c), 118(b), 120(a), (b), Dec. 31, 1970, 84 Stat. 1771, 1774, 1775; Pub. L. 96-153, title II, § 203(a), Dec. 21, 1979, 93 Stat. 1106.)

REFERENCES IN TEXT

The Housing and Community Development Amendments of 1979, referred to in subsec. (j), is Pub. L. 96-153, Dec. 21, 1979, 93 Stat. 1101. For the amendments to this section by that Act, see 1979 Amendments note set out below.

CODIFICATION

Section comprises subsecs. (a) to (e), (g), (h), and (j) to (*l*) of section 101 of Pub. L. 89-117. Subsecs. (a) to (e) of this section constitute subsecs. (a) to (e) of section 101, and subsecs. (f) and (g) and (h) to (j) of this section constitute subsecs. (g) and (h) and (j) to (*l*), respectively, of section 101. Subsecs. (f) and (i) of section 101 of Pub. L. 89-117 are classified to sections 1451(c) and 1465(c)(2) of Title 42, The Public Health and Welfare.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-153, § 203(a)(1), revised the definition of "qualified tenant" and added definition of "income".

Subsec. (d). Pub. L. 96-153, § 203(a)(2), struck out provisions that in determining the income of tenants, an amount equal to $300 for each minor person shall be deducted and that the earnings of minor persons shall not be included in the income of the tenant, and added provisions relating to the determination of amount of payments under contracts amended pursuant to subsec. (j) of this section by reference to section 1437f of Title 42.

Subsec. (e)(1)(B). Pub. L. 96-153, § 203(a)(3), substituted "occupying substandard housing or was involuntarily displaced at the time it was seeking assistance under this section" for "displaced by governmental action, is elderly, is physically handicapped, or is (or was) occupying substandard housing or housing extensively damaged or destroyed as the result of a natural disaster".

Subsecs. (i), (j). Pub. L. 96-153, § 203(a)(4), added subsecs. (i) and (j).

EFFECTIVE DATE OF 1979 AMENDMENT

Section 203(c) of Pub. L. 96-153 provided that: "The amendments made by subsections (a) [amending this section] and (b) [amending section 1715z-1 of this title] shall become effective on the date of enactment of this Act [Dec. 21, 1979]. The maximum tenant contribution applicable to any family whose occupancy of housing assisted under section 101 of the Housing and Urban Development Act of 1965 [this section] or section 236 of the National Housing Act [section 1715z-1 of this title] commenced prior to such date [Dec. 21, 1979] shall not exceed the maximum tenant contribution which would have been applicable under such section, as it was in effect on the day preceding the date of enactment of this Act [Dec. 2, 1979], so long as such occupancy is continuous thereafter."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1701z-11, 1715*l*, 1715z, 1715z-1a of this title; title 42 section 1439.

§ 1701x. Assistance with respect to housing for low- and moderate-income families

(a) Authorization to provide information, advice, and technical assistance; scope of assistance; authorization of appropriations

[*See main edition for text of (1)*]

(2) The Secretary shall provide the services described in clause (iii) of paragraph (1) for homeowners assisted under section 1715z of this title and may provide such services for other owners of single family dwelling units insured under subchapter II of this chapter. For purposes of this paragraph and clause (iii) of paragraph (1), the Secretary may provide the services described in such clause directly or may enter into contracts with, make grants to, and provide other types of assistance to private or public organizations with special competence and knowledge in counseling low- and moderate-income families to provide such services.

[*See main edition for text of (3); (b)*]

(As amended Pub. L. 95-128, title IX, § 903, Oct. 12, 1977, 91 Stat. 1149.)

AMENDMENTS

1977—Subsec. (a)(2). Pub. L. 95-128 authorized the Secretary to provide the services for other owners of single family dwelling units insured under subchapter II of this chapter.

§ 1701z-1. Research and demonstrations; authorization of appropriations; continuing availability of funds

The Secretary of Housing and Urban Development is authorized and directed to undertake such programs of research, studies, testing, and demonstration relating to the mission and programs of the Department as he determines to be necessary and appropriate. There are au-

thorized to be appropriated for activities under this title [12 U.S.C. 1701z-1 et seq.] not to exceed $65,000,000 for the fiscal year 1977, not to exceed $60,000,000 for the fiscal year 1978, not to exceed $62,000,000 for the fiscal year 1979, and not to exceed $50,300,000 for the fiscal year 1980. All funds so appropriated shall remain available until expended unless specifically limited.

(As amended Pub. L. 95-128, title II, § 204, Oct. 12, 1977, 91 Stat. 1129; Pub. L. 95-557, title III, § 305(a), Oct. 31, 1978, 92 Stat. 2097; Pub. L. 96-153, title III, § 304, Dec. 21, 1979, 93 Stat. 1112.)

AMENDMENTS

1979—Pub. L. 96-153 authorized appropriation of $50,300,000 for the fiscal year 1980.

1978—Pub. L. 95-557 substituted "not to exceed $60,000,000 for the fiscal year 1978, and not to exceed $62,000,000 for the fiscal year 1979", for "and not to exceed $60,000,000 for the fiscal year 1978".

1977—Pub. L. 95-128 authorized appropriation of $60,000,000 for fiscal year 1978.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1701z-2, 1701z-4 to 1701z-7, 1701z-9 of this title.

§ 1701z-6. Special housing need research and demonstration authority

PUBLIC HOUSING SECURITY

Pub. L. 95-557, title II, § 207, Oct. 31, 1978, 92 Stat. 2093, provided that:

"(a) This section may be cited as the 'Public Housing Security Demonstration Act of 1978'.

"(b)(1) The Congress finds that—

"(A) low-income and elderly public housing residents of the Nation have suffered substantially from rising crime and violence, and are being threatened as a result of inadequate security arrangements for the prevention of physical violence, theft, burglary, and other crimes;

"(B) older persons generally regard the fear of crime as the most serious problem in their lives, to the extent that one-fourth of all Americans over 65 voluntarily restrict their mobility because of it;

"(C) crime and the fear of crime have led some residents to move from public housing projects;

"(D) an integral part of successfully providing decent, safe, and sanitary dwellings for low-income persons is to insure that the housing is secure;

"(E) local public housing authorities may have inadequate security arrangements for the prevention of crime and vandalism; and

"(F) action is needed to provide for the security of public housing residents and to preserve the Nation's investment in its public housing stock.

"(2) It is, therefore, declared to be the policy of the United States to provide for a demonstration and evaluation of effective means of mitigating crime and vandalism in public housing projects, in order to provide a safe living environment for the residents, particularly the elderly residents, of such projects.

"(c)(1) The Secretary of Housing and Urban Development shall promptly initiate and carry out during the fiscal year beginning on October 1, 1978, to the extent approved in appropriation Acts, a program for the development, demonstration, and evaluation of improved, innovative community anticrime and security methods, concepts and techniques which will mitigate the level of crime in public housing projects and their surrounding neighborhoods.

"(2) In selecting public housing projects to receive assistance under this section, the Secretary shall assure that a broad spectrum of project types, locations and tenant populations are represented and shall consider at least the following: the extent of crime and vandalism currently existing in the projects; the extent, nature and quality of community anticrime efforts in the projects and surrounding areas; the extent, nature and quality of police and other protective services available to the projects and their tenants; the demand for public housing units in the locality, the vacancy rate, and extent of abandonment of such units; and the characteristics and needs of the public housing tenants.

"(3) In selecting the anticrime and security methods, concepts and techniques to be demonstrated under this section, the Secretary shall consider the improvement of physical security equipment or dwelling units in those projects, social and environmental design improvements, tenant awareness and volunteer programs, tenant participation and employment in providing security services, and such other measures as deemed necessary or appropriate by the Secretary. Particular attention shall be given to comprehensive community anticrime and security plans submitted by public housing authorities which (i) provide for coordination between public housing management and local law enforcement officials, or (ii) coordinate resources available to the community through programs funded by the Law Enforcement Assistance Administration, the Department of Health, Education, and Welfare, the Department of Labor, the Community Services Administration, and ACTION, or other Federal or State agencies.

"(4) In carrying out the provisions of this section, the Secretary shall coordinate and jointly target resources with other agencies, particularly the Law Enforcement Assistance Administration, the Department of Health, Education, and Welfare, the Department of Labor, the Community Services Administration, and ACTION.

"(d) The Secretary shall initiate and carry out a survey of crime and vandalism existing in the Nation's public housing projects. The survey shall include the nature, extent and impact of crime and vandalism and the nature and extent of resources currently available and employed to alleviate crime and vandalism in public housing.

"(e) The Secretary shall report to the Congress not later than eighteen months after the date of enactment of this Act [Oct. 31, 1978]. Such report shall include the results of the survey on crime and vandalism in public housing; findings from the demonstration and evaluation of various methods of reducing the level of crime; and legislative recommendations, if appropriate for (A) a comprehensive program to increase security in public housing projects and (B) increasing the coordination between anticrime programs of other State and Federal agencies that may be used by public housing authorities. Any recommendations shall include estimated costs of such programs.

"(f) Of the additional authority approved in appropriation Acts with respect to entering into annual contributions contracts under section 5(c) of the United States Housing Act of 1937 [section 1437c(c) of Title 42, The Public Health and Welfare] for the fiscal year beginning on October 1, 1978, the Secretary may utilize up to $12,000,000 of such authority in the fiscal year beginning on October 1, 1978, for the establishment of the public housing security demonstration program authorized by this section."

§ 1701z-8. Energy conservation and renewable-resource demonstration

[See main edition for text of (a) and (b)]

(c) Duties of Secretary

In carrying out the demonstration program required by this section, the Secretary shall—

[See main edition for text of (1) to (5)]

(6) consult with the Administrator, the Secretary of Housing and Urban Development,

and the heads of such other Federal agencies as may be appropriate.

[*See main edition for text of (d)*]

(e) Conditions upon availability of financial assistance

The Secretary may condition the availability of financial assistance with respect to the installation and implementation of any renewable-resource energy measure on such measure's meeting performance standards for reliability and efficiency and such certification procedures as the Secretary may, in consultation with the Administrator, the Secretary of Housing and Urban Development, and other appropriate Federal agencies, prescribe for the purpose of protecting consumers.

[*See main edition for text of (f) to (j)*]

(As amended Pub. L. 95-91, title VII, § 709(d), Aug. 4, 1977, 91 Stat. 608.)

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1970, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1977—Subsec. (c)(6). Pub. L. 95-91 inserted ", the Secretary of Housing and Urban Development," following "the Administrator".

Subsec. (e). Pub. L. 95-91 inserted ", the Secretary of Housing and Urban Development," following "the Administrator".

TRANSFER OF FUNCTIONS

The functions vested in the Secretary of Housing and Urban Development under this section were transferred to the Secretary of Energy by section 7154(b) of Title 42, The Public Health and Welfare.

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1701z-2 of this title; title 42 sections 6325, 6327, 7154.

§ 1701z-9. Expansion of home ownership opportunities in urban areas

In carrying out activities under section 1701z-1 of this title, the Secretary is authorized to conduct demonstrations to determine the feasibility of expanding homeownership opportunities in urban areas and encouraging the creation and maintenance of decent, safe, and sanitary housing in such areas by utilizing techniques including, but not limited to, the conversion of multifamily housing properties to condominium or cooperative ownership by individuals and families.

(Pub. L. 91-609, title V, § 510, as added Pub. L. 95-557, title III, § 305(b), Oct. 31, 1978, 92 Stat. 2097.)

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1970, and not as part of the National Housing Act which comprises this chapter.

STUDY TO DETERMINE FEASIBILITY OF UNDERGROUND CONSTRUCTION OF RESIDENTIAL HOUSING

Section 305(c) of Pub. L. 95-557 provided that: "The Secretary of Housing and Urban Development shall conduct a study of the feasibility of underground construction of residential housing and changes in housing codes and financing which may be necessary as the result of the adoption of this construction method. The Secretary shall transmit a final report no later than one year after the date of enactment of this Act [Oct. 31, 1978] to the Congress containing the findings and conclusions made as a result of such study, along with any legislative recommendations which the Secretary determines should be enacted with respect to the subject of such study."

§ 1701z-10. Model rehabilitation guidelines in inspection and approval of rehabilitated properties; report to Congress

(a)(1) The Secretary shall develop model rehabilitation guidelines for the voluntary adoption by States and communities to be used in conjunction with existing building codes by State and local officials in the inspection and approval of rehabilitated properties.

(2) Such guidelines shall be developed in consultation with the National Institute of Building Sciences, appropriate national organizations of agencies and officials of State and local governments, representatives of the building industry, and consumer groups, and other interested parties.

(3) The Secretary shall publish such guidelines for public comment not later than one year after October 31, 1978, and promulgate them no later than eighteen months after such date.

(4) The Secretary may furnish technical assistance to State and local governments to facilitate the use and implementation of such guidelines.

(b) The Secretary shall report to Congress not later than thirty-six months after October 31, 1978, regarding (1) actions taken by State and local governments to adopt guidelines or their equivalents, and (2) recommendations for further action.

(Pub. L. 91-609, title V, § 511, as added Pub. L. 95-557, title IX, § 903, Oct. 31, 1978, 92 Stat. 2125.)

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1970, and not as part of the National Housing Act which comprises this chapter.

§ 1701z-11. Management and disposal of multifamily housing projects

(a) Purpose and policy of United States

It is the policy of the United States that the Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary") shall manage and dispose of multifamily housing projects which are owned by the Secretary in a manner consistent with the National Housing Act [12 U.S.C. 1701 et seq.] and this section. The purpose of the property management and disposition program of the Department of

Housing and Urban Development shall be to manage and dispose of projects in a manner which will protect the financial interests of the Federal Government and be less costly to the Federal Government than other reasonable alternatives by which the Secretary can further the goals of—

(1) preserving the housing units so that they can remain available to and affordable by low- and moderate-income families;

(2) preserving and revitalizing residential neighborhoods;

(3) maintaining the existing housing stock in a decent, safe, and sanitary condition;

(4) minimizing the involuntary displacement of tenants; and

(5) minimizing the need to demolish projects.

The Secretary, in determining the manner by which a project shall be managed or disposed of, may balance competing goals relating to individual projects in a manner which will further the achievement of the overall purpose of this section.

(b) Management or disposal of property by negotiated competitive bids

The Secretary is authorized, in carrying out this section—

(1) to dispose of a multifamily housing project owned by the Secretary on a negotiated, competitive bid, or other basis, on such terms as the Secretary deems appropriate considering the low- and moderate-income character of the project and the requirements of subsection (a) of this section, to a purchaser determined by the Secretary to be capable of (A) satisfying the conditions of the disposition; (B) implementing a sound financial and physical management program; (C) responding to the needs of the tenants and working cooperatively with resident organizations; (D) providing adequate organizational, staff and financial resources to the project; and (E) meeting such other requirements as the Secretary may determine; and

(2) to contract for management services for a multifamily housing project, owned by the Secretary, on a negotiated, competitive bid, or other basis at a price determined by the Secretary to be reasonable, with a manager the Secretary has determined is capable of (A) implementing a sound financial and physical management program, (B) responding to the needs of the tenants and working cooperatively with resident organizations, (C) providing adequate organizational, staff, and other resources to implement a management program determined by the Secretary, and (D) meeting such other requirements as the Secretary may determine.

(c) Maintenance of housing projects

Except where the Secretary has determined on a case-by-case basis that it would be clearly inappropriate, given the manner by which an individual project is to be managed or disposed of pursuant to subsection (a) of this section, the Secretary shall seek to—

(1) maintain all occupied multifamily housing projects owned by the Secretary in a decent, safe, and sanitary condition; and

(2) to the greatest extent possible, maintain full occupancy in all multifamily housing projects owned by the Secretary.

(d) Displacement of tenants and relocation assistance

(1) Whenever tenants will be displaced as a result of the disposition of, or repairs to, a multifamily housing project owned by the Secretary, the Secretary shall identify tenants who will be displaced, and shall notify all such tenants of their pending displacement and of any relocation assistance which may be available.

(2) The Secretary shall assure for any such tenant (who continues to meet applicable qualification standards) the right—

(A) to return, whenever possible, to a repaired unit;

(B) to occupy a unit in another multifamily housing project owned by the Secretary;

(C) to obtain housing assistance under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.]; or

(D) to receive any other available relocation assistance as the Secretary determines to be appropriate.

(e) Assignment or partial payment of mortgages

Notwithstanding any other provision of law, whenever the Secretary is requested to accept assignment of a mortgage insured by the Secretary which covers a multifamily housing project, and the Secretary determines that partial payment would be less costly to the Federal Government than other reasonable alternatives for maintaining the low- and moderate-income character of the project, the Secretary may request the mortgagee in lieu of assignment, to accept partial payment of the claim under the mortgage insurance contract and to recast the mortgage, under such terms and conditions as the Secretary may determine. As a condition to a partial claim payment under this section, the mortgagor shall agree to repay to the Secretary the amount of such payment and such obligation shall be secured by a second mortgage on the property on such terms and conditions as the Secretary may determine.

(f) Definitions

For the purpose of this section, the term "multifamily housing project" means a multifamily project which is, or prior to acquisition by the Secretary was, assisted under section 236 [12 U.S.C. 1715z-1], the proviso of section 221(d)(5) of the National Housing Act [12 U.S.C. 1715*l*(d)(5)], or section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], and which is insured under the National Housing Act [12 U.S.C. 1701 et seq.].

(g) Rules and regulations

The Secretary shall issue such rules and regulations as may be necessary to carry out the provisions of this section within 90 days after October 31, 1978.

(Pub. L. 95-557, title II, § 203, Oct. 31, 1978, 92 Stat. 2088; Pub. L. 96-153, title II, § 208, Dec. 21, 1979, 93 Stat. 1109.)

REFERENCES IN TEXT

The National Housing Act, as amended, referred to in subsecs. (a) and (f), is act June 27, 1934, ch. 847, 48

Stat. 1246, as amended, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The United States Housing Act of 1937, as amended, referred to in subsec. (d)(2)(C), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

Section 101 of the Housing and Urban Development Act of 1965, referred to in subsec. (f), enacted section 1701s of this title and amended sections 1451 and 1465 of Title 42, The Public Health and Welfare.

CODIFICATION

Section was enacted as part of the Housing and Community Development Amendments of 1978, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1979—Subsec. (d)(2). Pub. L. 96-153 substituted "assure for any such tenant (who continues to meet applicable qualification standards) the right" for "seek to assure the maximum opportunity for any such tenant".

§ 1701z-12. Housing access

The Secretary shall require any purchaser of a multifamily housing project owned by the Secretary which is sold on or after October 1, 1978, to agree not to refuse unreasonably to lease a vacant dwelling unit in the project which rents for an amount not greater than the fair market rent for a comparable unit in the area as determined by the Secretary under section 1437f of title 42 to a holder of a certificate of eligibility under that section solely because of such prospective tenant's status as a certificate holder.

(Pub. L. 95-557, title II, § 204, Oct. 31, 1978, 92 Stat. 2090.)

CODIFICATION

Section was enacted as part of the Housing and Community Development Amendments of 1978, and not as part of the National Housing Act which comprises this chapter.

§ 1701z-13. Solar energy for single-family and multifamily housing units

(a) Purpose

It is the purpose of this section to promote and extend the application of viable solar energy systems as a desirable source of energy for residential single-family and multifamily housing units.

(b) Cost-effective and economically feasible solar energy systems; definition

(1) The Secretary, in carrying out programs and activities under section 1452b of title 42, section 1701q of this title, and section 1437f of title 42, shall permit the installation of solar energy systems which are cost-effective and economically feasible.

(2) For the purpose of this Act, the term "solar energy system" means any addition, alteration, or improvement to an existing or new structure which is designed to utilize wind energy or solar energy either of the active type based on mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types to reduce the energy requirements of that structure from other energy sources, and which is in conformity with such criteria and standards as shall be prescribed by the Secretary in consultation with the Secretary of Energy.

(c) Matters considered

In carrying out subsection (b) of this section, the Secretary shall take such steps as may be necessary to encourage the installation of cost-effective and economically feasible solar energy systems in housing assisted under the programs and activities referred to in such subsection taking into account the interests of low-income homeowners and renters, including the implementation of a plan of action to publicize the availability and feasibility of solar energy systems to current or potential recipients of assistance under such programs and activities.

(d) Report to Congress

The Secretary shall, in conjuction[1] with the Secretary of Energy, transmit to the Congress, within eighteen months after October 31, 1978, a report setting forth—

(1) the number of solar units which were contracted for or installed or which are on order under the provisions of subsection (b)(1) of this section during the first twelve full calendar months after October 31, 1978; and

(2) an analysis of any problems and benefits related to encouraging the use of solar energy systems in the programs and activities referred to in subsection (b) of this section.

(Pub. L. 95-557, title II, § 209, Oct. 31, 1978, 92 Stat. 2095.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(2), is Pub. L. 95-557, Oct. 31, 1978, 92 Stat. 2080, known as the Housing and Community Development Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendments note under section 5301 of Title 42, The Public Health and Welfare, and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Amendments of 1978, and not as part of the National Housing Act which comprises this chapter.

SUBCHAPTER I—HOUSING RENOVATION AND MODERNIZATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1430, 1451, 1709-1a, 1723f, 1723g, 1723h, 1731a, 1743, 1761c of this title; title 38 section 1828.

§ 1703. Insurance of financial institutions

(a) The Secretary is authorized and empowered upon such terms and conditions as he may prescribe, to insure banks, trust companies, personal finance companies, mortgage companies,

[1] So in original. Probably should be "conjunction".

building and loan associations, installment lending companies and other such financial institutions, which the Secretary finds to be qualified by experience or facilities and approves as eligible for credit insurance, against losses which they may sustain as a result of loans and advances of credit, and purchases of obligations representing loans and advances of credit, made by them on and after July 1, 1939, and prior to October 1, 1980, for the purpose of (i) financing alterations, repairs, and improvements upon or in connection with existing structures or mobile homes, and the building of new structures, upon urban, suburban, or rural real property (including the restoration, rehabilitation, rebuilding, and replacement of such improvements which have been damaged or destroyed by earthquake, conflagration, tornado, hurricane, cyclone, flood, or other catastrophe), by the owners thereof or by lessees of such real property under a lease expiring not less than six months after the maturity of the loan or advance of credit; and for the purpose of (ii) financing the purchase of a mobile home to be used by the owner as his principal residence or financing the purchase of a lot on which to place such home and paying expenses reasonably necessary for the appropriate preparation of such lot, including the installation of utility connections, sanitary facilities, and paving, and the construction of a suitable pad, or financing only the acquisition of such a lot either with or without such preparation by an owner of a mobile home; and for the purpose of financing the preservation of historic structures, and, as used in this section, the term "historic structures" means residential structures which are registered in the National Register of Historic Places or which are certified by the Secretary of the Interior to conform to National Register criteria; and the term "preservation" means restoration or rehabilitation undertaken for such purposes as are approved by the Secretary in regulations issued by him, after consulting with the Secretary of the Interior. In no case shall the insurance granted by the Secretary under this section to any such financial institution on loans, advances of credit, and purchases made by such financial institution for such purposes on and after July 1, 1939, exceed 10 per centum of the total amount of such loans, advances of credit, and purchases: *Provided*, That with respect to any loan, advance of credit, or purchase made after August 2, 1954, the amount of any claim for loss on any such individual loan, advance of credit or purchase paid by the Secretary under the provisions of this section to a lending institution shall not exceed 90 per centum of such loss.

[*See main edition for text of second par.*]

Alterations, repairs, and improvements upon or in connection with existing structures may include the provision of fire safety equipment, energy conserving improvements, or the installation of solar energy systems. As used in this section—

(1) the term "fire safety equipment" means any device or facility which is designed to reduce the risk of personal injury or property damage resulting from fire and is in conformity with such criteria and standards as shall be prescribed by the Secretary;

(2) the term "energy conserving improvements" means the purchase and installation of weatherization materials as defined in section 6862(9) of title 42; and

(3) the term "solar energy system" means any addition, alteration, or improvement to an existing or new structure which is designed to utilize wind energy or solar energy either of the active type based on mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types to reduce the energy requirements of that structure from other energy sources, and which is in conformity with such criteria and standards as shall be prescribed by the Secretary in consultation with the Secretary of Energy.

(b) No insurance shall be granted under this section to any such financial institution with respect to any obligation representing any such loan, advance of credit, or purchase by it (1) if the amount of such loan, advance of credit, or purchase exceeds $15,000, except that an obligation financing the purchase of a mobile home may be in an amount not exceeding $18,000 ($27,000 in the case of a mobile home containing two or more modules); (2) if such obligation has a maturity in excess of fifteen years and thirty-two days, except that such maturity limitation shall not apply if such loan, advance of credit, or purchase is for the purpose of financing the construction of a new structure for use in whole or in part for agricultural purposes: *Provided*, That an obligation financing the purchase of a mobile home may have a maturity not in excess of fifteen years and thirty-two days (twenty-three years and thirty-two days in the case of a mobile home composed of two or more modules); or (3) unless the obligation bears such interest, has such maturity, and contains such other terms, conditions, and restrictions as the Secretary shall prescribe, in order to make credit available for the purposes of this subchapter: *Provided*, That any such obligation with respect to which insurance is granted under this section on or after sixty days from August 7, 1956 shall bear interest, and insurance premium charges, not exceeding (A) an amount, with respect to so much of the net proceeds thereof as does not exceed $2,500, equivalent to $5.50 discount per $100 of original face amount of a one-year note payable in equal monthly installments, plus (B) an amount, with respect to any portion of the net proceeds thereof in excess of $2,500, equivalent to $4.50 discount per $100 of original face amount of such a note; *Provided further*, That the amounts referred to in clauses (A) and (B) of the preceding proviso, when correctly based on tables of calculations issued by the Secretary or adjusted to eliminate minor errors in computation in accordance with requirements of the Secretary, shall be deemed to comply with such proviso: *Provided further*, That insurance may be granted to any such financial institution with respect to any obligation not in excess of $37,500 nor an average amount of $7,500 per family unit and having a maturity not in excess

of fifteen years and thirty-two days representing any such loan, advance of credit, or purchase made by it if such loan, advance of credit, or purchase is made for the purpose of financing the alteration, repair, improvement, or conversion of an existing structure used or to be used as an apartment house or a dwelling for two or more families: *Provided further,* That any obligation with respect to which insurance is granted under this section on or after July 1, 1939, may be refinanced and extended in accordance with such terms and conditions as the Secretary may prescribe, but in no event for an additional amount or term in excess of the maximum provided for in this subsection. Notwithstanding the foregoing limitations, any loan to finance fire safety equipment for a nursing home, extended health care facility, intermediate health care facility, or other comparable health care facility may involve such principal amount and have such maturity as the Secretary may prescribe.

Notwithstanding the limitations contained in the first proviso to clause (2) of the preceding sentence, a loan financing the purchase of a mobile home and an undeveloped lot on which to place the home shall—

(A) involve such an amount not exceeding $24,000 ($33,000 in the case of a mobile home composed of two or more modules); and

(B) have a maturity not exceeding twenty years and thirty-two days (twenty-five years and thirty-two days in the case of a mobile home composed of two or more modules).

A loan financing the purchase of a mobile home and a suitably developed lot on which to place the home shall—

(A) involve such an amount not exceeding $27,500 ($36,500 in the case of a mobile home composed of two or more modules); and

(B) have a maturity not exceeding twenty years and thirty-two days (twenty-five years and thirty-two days in the case of a mobile home composed of two or more modules).

A loan financing the purchase, by an owner of a mobile home which is the principal residence of that owner, of only a lot on which to place that mobile home shall—

(A) involve such an amount as may be necessary to cover the cost of purchasing the lot but not exceeding (i) $6,250 in the case of an undeveloped lot, or (ii) $9,375 in the case of a developed lot; and

(B) have a maturity not exceeding fifteen years and thirty-two days.

A mobile home lot loan may be made only if the owner certifies that he will place his mobile home on the lot acquired with such loan within six months after the date of such loan.

A loan financing the preservation of a historic structure shall—

(1) involve an amount not exceeding $15,000 per family unit; and

(2) have a maturity not exceeding fifteen years and thirty-two days.

Because of prevailing higher costs, the Secretary may, by regulation, in Alaska, Guam, or Hawaii, increase any dollar amount limitation on mobile homes or mobile home lot loans contained in this subsection by not to exceed 40 per centum.

[*See main edition for text of* (c) *to* (h)]

(As amended June 30, 1977, Pub. L. 95-60, § 1(a), 91 Stat. 257; July 31, 1977, Pub. L. 95-80, § 1(a), 91 Stat. 339; Oct. 12, 1977, Pub. L. 95-128, title II, §§ 301(a), 306, 91 Stat. 1131, 1134; Sept. 30, 1978, Pub. L. 95-406, § 1(a), 92 Stat. 879; Oct. 31, 1978, Pub. L. 95-557, title III, §§ 301(a), 320, 92 Stat. 2095, 2101; Nov. 9, 1978, Pub. L. 95-619, title II, § 241, 92 Stat. 3228; Sept. 28, 1979, Pub. L. 96-71, § 1(a), 93 Stat. 501; Nov. 8, 1979, Pub. L. 96-105, § 1(a), 93 Stat. 794; Dec. 21, 1979, Pub. L. 96-153, title III, §§ 301(a), 313(a), 93 Stat. 1111, 1116.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-153, § 301(a), substituted "October 1, 1980" for "December 1, 1979".

Pub. L. 96-105 substituted "December 1, 1979" for "November 1, 1979".

Pub. L. 96-71 substituted "November 1, 1979" for "October 1, 1979."

Subsec. (b). Pub. L. 96-153, § 313(a), substituted: in cl. (1) of the first sentence of the first unlettered paragraph "$18,000 ($27,000 in the case of a mobile home containing" for "$16,000 ($24,000 in the case of a mobile home composing", in subpar. (A) of the second unlettered paragraph "such an amount not exceeding $24,000 ($33,000 in the case of a mobile home composed of two or more modules)" for "an amount not exceeding (i) the maximum amount under clause (1) of the first paragraph of this subsection, and (ii) such amount not to exceed $5,000 as may be necessary to cover the cost of purchasing the lot", in subpar. (B) of the second unlettered paragraph "twenty years and thirty-two days (twenty-five" for "fifteen years and thirty-two days (twenty-three", in subpar. (A) of the third unlettered paragraph "such an amount not exceeding $27,500 ($36,500 in the case of a mobile home composed of two or more modules)" for "an amount not exceeding (i) the maximum amount under clause (1) of the first paragraph of this subsection, and (ii) such amount not to exceed $7,500 as may be necessary to cover the cost of purchasing the lot", in subpar. (B) of such unlettered paragraph "twenty years and thirty-two days (twenty-five" for "fifteen years and thirty-two days (twenty-three", in subpar. (A) of the fourth unlettered paragraph "$6,250 in the case of an undeveloped lot, or (ii) $9,375" for "$5,000 in the case of an undeveloped lot, or (ii) $7,500", and in subpar. (B) of such paragraph "fifteen years and thirty-two days" for "ten years and thirty-two days".

1978—Subsec. (a). Pub. L. 95-557, § 301(a), substituted "October 1, 1979" for "November 1, 1978".

Pub. L. 95-406 substituted "November 1, 1978" for "October 1, 1978".

Subsec. (a)(2). Pub. L. 95-619 defined "energy conserving improvements" in terms of purchase and installation of weatherization materials as defined in section 6862(9) of title 42 rather than additions, alterations, or improvements of an existing or new structure, designed to reduce the total energy requirements of a structure in conformity with standards prescribed by the Secretary.

Subsec. (a)(3). Pub. L. 95-619 expanded the definition of "solar energy system" to include the utilization of wind energy and added the distinction between active and passive types of energy systems.

Subsec. (b). Pub. L. 95-557, § 320, substituted "not in excess of $37,500 nor an average amount of $7,500 per family unit and having a maturity not in excess of fifteen years" for "not in excess of $25,000 nor an average amount of $5,000 per family unit and having a maturity not in excess of twelve years".

1977—Subsec. (a). Pub. L. 95-128, § 301(a), substituted "October 1, 1978" for "October 1, 1977".

Pub. L. 95-80 substituted "October 1, 1977" for "August 1, 1977".

Pub. L. 95-60 substituted "August 1, 1977" for "June 30, 1977".

Subsec. (b). Pub. L. 95-128, § 306, substituted: in cl. (1) of first sentence "$15,000" for "$10,000" and "$16,000 ($24,000" for "$12,500 ($20,000", and in cl. (2) "fifteen years" for "twelve years"; inserted at end of proviso in cl. (2) "(twenty-three years and thirty-two days in the case of a mobile home composed of two or more modules)"; substituted in subpar. (B) of the second and third paragraphs "twenty-three years" for "twenty years"; and added paragraph at end of subsec. (b) which authorized the Secretary to increase by regulation any dollar amount limitation on mobile homes or mobile home lot loans contained in this subsection by not to exceed 40 per centum.

REPORT RESPECTING OWNERSHIP OF MOBILE HOME SITES

Section 321 of Pub. L. 96-153 provided that: "Not later than March 31, 1980, the Secretary of Housing and Urban Development shall transmit to the Congress a report containing recommendations for programs and policies which encourage individual ownership of mobile home lots through condominium or cooperative development of mobile home parks or through the development of mobile home subdivisions."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1706d, 1709, 1713, 1709-1, 1715h, 1715k, 1715t, 1715w, 1715z, 1715z-5, 1715z-6, 1717, 1723f, 1723g, 1723h, 1735c of this title; title 42 sections 1437c, 1471, 1490g, 8231.

§ 1706e. Urban homestead program of unit of general local government, State, or designated public agency

[*See main edition for text of* (a) *to* (e)]

(f) List of all unoccupied one- to four-family residences owned by Secretary and Administrator of Veterans' Affairs; request for by unit of general local government, State, or designated public agency where property located

In order to facilitate planning for purposes of this section, the Secretary and the Administrator of Veterans' Affairs shall, upon request of a unit of general local government or a State or a public agency designated by a unit of general local government or a State, provide a listing of all unoccupied one- to four-family residences to which the Secretary or the Administrator holds title and which are located within the geographic jurisdiction of such unit, State, or agency.

(g) Reimbursement by Secretary

(1) The Secretary is authorized to reimburse the Administrator of Veterans' Affairs, in an amount to be agreed upon by the Secretary and the Administrator, for property which the Administrator conveys to a unit of general local government, State, or agency for use in connection with an urban homesteading program approved by the Secretary.

(2) The Secretary is authorized to reimburse the Secretary of Agriculture, in an amount to be agreed upon by the Secretary and the Secretary of Agriculture, for property which the Secretary of Agriculture conveys to a unit of general local government, State, or agency for use in connection with an urban homesteading program approved by the Secretary.

(h) Authorization of appropriations

To reimburse the housing loan funds for properties transferred pursuant to this section, and to carry out the provisions of subsection (c) of this section, there are authorized to be appropriated not to exceed $5,000,000 for the fiscal year 1975, not to exceed $6,250,000 for the fiscal year 1976, and for the transition quarter, not to exceed $15,000,000 for fiscal year 1977, not to exceed $15,000,000 for the fiscal year 1978, and not to exceed $26,000,000 for the fiscal year 1979. Any amounts so appropriated shall remain available until expended.

(As amended Pub. L. 95-24, title I, § 103, Apr. 30, 1977, 91 Stat. 55; Pub. L. 95-128, title II, § 203, Oct. 12, 1977, 91 Stat. 1129; Pub. L. 95-557, title I, § 102, Oct. 31, 1978, 92 Stat. 2083; Pub. L. 96-153, title I, § 106, Dec. 21, 1979, 93 Stat. 1104.)

AMENDMENTS

1979—Subsec. (g). Pub. L. 96-153 added subsec. (g). Former subsec. (g) was redesignated (h).

Subsec. (h). Pub. L. 96-153 redesignated former subsec. (g) as subsec. (h).

1978—Subsec. (f). Pub. L. 95-557, § 102(a), substituted "the Secretary and the Administrator of Veterans' Affairs" for "the Secretary" and "the Secretary or the Administrator" for "the Secretary".

Subsec. (g). Pub. L. 95-557, § 102(b), struck out "and" following "fiscal year 1977" and added "and not to exceed $26,000,000 for the fiscal year 1979" following "fiscal year 1978".

1977—Subsec. (g). Pub. L. 95-128 increased appropriations authorization limitation to $15,000,000 from $5,000,000 for fiscal year 1978.

Pub. L. 95-24 substituted "not to exceed $15,000,000 for fiscal year 1977" for "not to exceed $5,000,000 for fiscal year 1977".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-557 effective Oct. 1, 1978, see section 104 of Pub. L. 95-557, set out as an Effective Date of 1978 Amendment note under section 1709 of this title.

SUBCHAPTER II—MORTGAGE INSURANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1430, 1701x, 1702, 1705, 1709-1a, 1715f, 1720, 1731a, 1735f-2, 1735f-6, 1743, 1748b, 2803 of this title; title 38 section 1828; title 42 sections 3035g, 3535, 5403.

§ 1708. Mutual Mortgage Insurance Fund

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1709, 1735 of this title.

§ 1709. Insurance of mortgages

[*See main edition for text of* (a)]

(b) Eligibility for insurance; mortgage limits

To be eligible for insurance under this section a mortgage shall—

[*See main edition for text of* (1)]

(2) Involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed $67,500 in

the case of property upon which there is located a dwelling designed principally for a one-family residence; or $76,000 in the case of a two-family residence (whether or not such one- or two-family residence may be intended to be rented temporarily for school purposes); or $92,000 in the case of a three-family residence, or $107,000 in the case of a four-family residence; and (except as provided in the next to the last sentence of this paragraph) not to exceed an amount equal to the sum of (i) 97 per centum of $25,000 of the appraised value of the property, as of the date the mortgage is accepted for insurance, and (ii) 95 per centum of such value in excess of $25,000. If the mortgagor is a veteran, and the mortgage to be insured under this section covers property upon which there is located a dwelling designed principally for a one-family residence, the principal obligation may be in an amount equal to the sum of (i) 100 per centum of $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance, and (ii) 95 per centum of such value in excess of $25,000. Notwithstanding any other provision of this section, in any case where the dwelling is not approved for mortgage insurance prior to the beginning of construction, such mortgage shall not exceed 90 per centum of the entire appraised value of the property as of the date the mortgage is accepted for insurance, unless (i) the dwelling was completed more than one year prior to the application for mortgage insurance, or (ii) the dwelling was approved for guaranty, insurance, or a direct loan under chapter 37 of title 38 prior to the beginning of construction, or (iii) the dwelling is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such dwelling had been approved for mortgage insurance prior to the beginning of construction. As used herein, the term "veteran" means any person who served on active duty in the armed forces of the United States for a period of not less than ninety days (or is certified by the Secretary of Defense as having performed extra-hazardous service), and who was discharged or released therefrom under conditions other than dishonorable. Notwithstanding any other provision of this paragraph, the amount which may be insured under this section may be increased by up to 20 percent if such increase is necessary to account for the increased cost of the residence due to the installation of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) therein.

[*See main edition for text of (3) to (9)*]

(c) Premium charges

The Secretary is authorized to fix premium charges for the insurance of mortgages under the separate sections of this subchapter but in the case of any mortgage such charge shall be not less than an amount equivalent to one-fourth of 1 per centum per annum nor more than an amount equivalent to 1 per centum per annum of the amount of the principal obligation of the mortgage outstanding at any time, without taking into account delinquent payments or prepayments: *Provided,* That premium charges fixed for insurance under subsections (n) and (k) of this section are not required to be the same as the premium charges for mortgages insured under the other provisions of this section, but in no case shall premium charges under subsection (n) or (k) of this section exceed 1 per centum per annum: *Provided,* That any reduced premium charge so fixed and computed may, in the discretion of the Secretary, also be made applicable in such manner as the Secretary shall prescribe to each insured mortgage outstanding under the section or sections involved at the time the reduced premium charge is fixed. Such premium charges shall be payable by the mortgagee, either in cash, or in debentures issued by the Secretary under this subchapter at par plus accrued interest, in such manner as may be prescribed by the Secretary: *Provided,* That debentures presented in payment of premium charges shall represent obligations of the particular insurance fund or account to which such premium charges are to be credited: *Provided further,* That the Secretary may require the payment of one or more such premium charges at the time the mortgage is insured, at such discount rate as he may prescribe not in excess of the interest rate specified in the mortgage. If the Secretary finds upon the presentation of a mortgage for insurance and the tender of the initial premium charge or charges so required that the mortgage complies with the provisions of this section, such mortgage may be accepted for insurance by endorsement or otherwise as the Secretary may prescribe; but no mortgage shall be accepted for insurance under this section unless the Secretary finds that the project with respect to which the mortgage is executed is economically sound. In the event that the principal obligation of any mortgage accepted for insurance is paid in full prior to the maturity date, the Secretary is further authorized in his discretion to require the payment by the mortgagee of an adjusted premium charge in such amount as the Secretary determines to be equitable, but not in excess of the aggregate amount of the premium charges that the mortgagee would otherwise have been required to pay if the mortgage had continued to be insured under this section until such maturity date; and in the event that the principal obligation is paid in full as herein set forth the Secretary is authorized to refund to the mortgagee for the account of the mortgagor all, or such portion as he shall determine to be equitable, of the current unearned premium charges theretofore paid.

[*See main edition for text of (d) to (h)*]

(i) Single-family housing in outlying areas

The Secretary is authorized to insure under this section any mortgage meeting the requirements of subsection (b) of this section, except as modified by this subsection, which involves a principal obligation not in excess of 75 per centum of the limit on the principal obligation

applicable to a one-family residence under subsection (b) of this section and not in excess of 97 per centum (or, in any case where the dwelling is not approved for mortgage insurance prior to the beginning of construction, unless the construction of the dwelling was completed more than one year prior to the application for mortgage insurance or the dwelling was approved for guaranty, insurance, or direct loan under chapter 37 of title 38 prior to the beginning of construction, 90 per centum) of the appraised value of a property located in an area where the Secretary finds it is not practicable to obtain conformity with many of the requirements essential to the insurance of mortgages on housing in built-up urban areas, upon which there is located a dwelling designed principally for a single-family residence: *Provided,* That if the mortgagor is not the occupant of the property at the time of insurance, the principal obligation of the mortgage shall not exceed 85 per centum of the appraised value of the property: *Provided further,* That the Secretary finds that the property with respect to which the mortgage is executed is an acceptable risk, giving consideration to the need for providing adequate housing for families of low and moderate income particularly in suburban and outlying areas or small communities: *Provided further,* That under the foregoing provisions of this subsection the Secretary is authorized to insure any mortgage issued with respect to a farm home on a plot of land two and one-half or more acres in size adjacent to an all-weather public road.

[*See main edition for text of (j)*]

(k) Rehabilitation of one- to four-family structures; definitions; eligibility; refinancing and extension; General Insurance Fund

(1) The Secretary may, in order to assist in the rehabilitation of one- to four-family structures used primarily for residential purposes, insure and make commitments to insure rehabilitation loans (including advances made during rehabilitation) made by financial institutions on and after 180 days following October 31, 1978. Such commitments to insure and such insurance shall be made upon such terms and conditions which the Secretary may prescribe and which are consistent with the provisions of subsections (b), (c), (e), (i), and (j) of this section, except as modified by the provisions of this subsection.

(2) For the purpose of this subsection—

(A) the term "rehabilitation loan" means a loan, advance of credit, or purchase of an obligation representing a loan or advance of credit, made for the purpose of financing—

(i) the rehabilitation of an existing one- to four-unit structure which will be used primarily for residential purposes;

(ii) the rehabilitation of such a structure and the refinancing of the outstanding indebtedness on such structure and the real property on which the structure is located; or

(iii) the rehabilitation of such a structure and the purchase of the structure and the real property on which it is located; and

(B) the term "rehabilitation" means the improvement (including improvements designed to meet cost-effective energy conservation standards prescribed by the Secretary) or repair of a structure, or facilities in connection with a structure, and may include the provision of such sanitary or other facilities as are required by applicable codes, a community development plan, or a statewide property insurance plan to be provided by the owner or tenant of the project.

(3) To be eligible for insurance under this subsection, a rehabilitation loan shall—

(A) involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount which does not exceed, when added to any outstanding indebtedness of the borrower which is secured by the structure and the property on which it is located, the amount specified in subsection (b)(2) of this section; except that, in determining the amount of the principal obligation for purposes of this subsection, the Secretary shall establish as the appraised value of the property an amount not to exceed the sum of the estimated cost of rehabilitation and the Secretary's estimate of the value of the property before rehabilitation;

(B) bear interest at a rate permitted by the Secretary for mortgages insured under this section; except that the Secretary may permit a higher rate of interest to be applied to the loan with respect to the period beginning with the making of the loan and ending with the completion of the rehabilitation or such earlier time as the Secretary may determine;

(C) be an acceptable risk, as determined by the Secretary; and

(D) comply with such other terms, conditions, and restrictions as the Secretary may prescribe.

(4) Any rehabilitation loan insured under this subsection may be refinanced and extended in accordance with such terms and conditions as the Secretary may prescribe, but in no event for an additional amount or term which exceeds the maximum provided for in this subsection.

(5) All funds received and all disbursements made pursuant to the authority established by this subsection shall be credited or charged, as appropriate, to the General Insurance Fund, and insurance benefits shall be paid in cash out of such Fund or in debentures executed in the name of such Fund. Insurance benefits paid with respect to loans insured under this subsection shall be paid in accordance with paragraphs (6) and (7) of section 1715k(h) of this title, except that any reference to "this subsection" in such paragraphs shall be construed as referring to this subsection.

[*See main edition for text of (l) to (n)*]

(o) Insurance of mortgages on owner occupied homes in communities subject to adverse economic conditions resulting from Indian claims to ownership of land; obligation of Special Risk Insurance Fund

(1) Notwithstanding any other provision of this section or any other section of this subchapter, the Secretary is authorized to insure, and to commit to insure, under subsection (b) of this section as modified by this subsection a mortgage which meets both the requirements of this subsection and such criteria as the Secretary by regulation may prescribe to further the purpose of this subsection, in any community where the Secretary determines that—

(A) temporary adverse economic conditions exist throughout the community as a direct and primary result of outstanding claims to ownership of land in the community by an American Indian tribe, band, or Nation;

(B) such ownership claims are reasonably likely to be settled, by court action or otherwise;

(C) as a direct result of the community's temporarily impaired economic condition, owner occupants of homes in the community have been involuntarily unemployed or underemployed and have thus incurred substantial reductions in income which significantly impair their ability to continue timely payment of their mortgages;

(D) as a result, widespread mortgage foreclosures and distress sales of homes are likely in the community; and

(E) fifty or more individual homeowners were joined as parties defendant or were members of a defendant class prior to December 31, 1976, in litigation involving claims to ownership of land in the community by an American Indian tribe, band, or Nation.

(2) A mortgage shall be eligible for insurance under subsection (b) of this section as modified by this subsection without regard to limitations in this subchapter relating to a mortgagor's reasonable ability to pay, economic soundness, marketability of title, or any other statutory restriction which the Secretary determines is contrary to the purpose of this subsection, but only if the mortgagor is an owner occupant of a home in a community specified in paragraph (1) who, as a direct result of the community's temporarily impaired economic condition, has been involuntarily unemployed or underemployed and has thus incurred a substantial reduction in income which significantly impairs the owner's ability to continue timely payment of the mortgage. The Secretary is authorized to encourage or afford directly to or on behalf of mortgagors whose mortgages are insured under subsection (b) of this section as modified by this subsection forebearance, assignment of mortgages to the Secretary, or such other relief as the Secretary deems appropriate and consistent with the purpose of this subsection. The Secretary, in connection with any mortgage insured under subsection (b) of this section as modified by this subsection, shall have all statutory powers, authority, and responsibilities which the Secretary has with respect to other mortgages insured under subsection (b) of this section, except that the Secretary may modify such powers, authority, or responsibilities where the Secretary deems such action to be necessary because of the special nature of the mortgage involved. Notwithstanding section 1708 of this title, the insurance of a mortgage under subsection (b) of this section as modified by this subsection shall be the obligation of the Special Risk Insurance Fund created pursuant to section 1715z–3 of this title.

(As amended Oct. 12, 1977, Pub. L. 95–128, title III, §§ 303(a), (g), 304(a), 305, 307, 91 Stat. 1132, 1133, 1134; Oct. 31, 1978, Pub. L. 95–557, title I, § 101(c)(1), (2), 92 Stat. 2082, 2083; Nov. 9, 1978, Pub. L. 95–619, title II, § 248(a), 92 Stat. 3235; Dec. 21, 1979, Pub. L. 96–153, title III, §§ 310, 312(a), 318, 93 Stat. 1114, 1116, 1119.)

AMENDMENTS

1979—Subsec. (b)(2). Pub. L. 96–153, §§ 310, 312(a), excepted dwellings covered by a consumer protection or warranty plan acceptable to the Secretary and satisfying all requirements which would have been applicable if such dwellings had been approved for mortgage insurance prior to the beginning of construction from the limit on the maximum amount of mortgage on dwellings not approved for mortgage insurance prior to the beginning of construction, and substituted "$67,500" for "$60,000", "$76,000" for "$65,000" where it first appeared, "$92,000" for "$65,000" where it appeared the second time, and "$107,000" for "$75,000".

Subsec. (i). Pub. L. 96–153, § 318 substituted "two and one-half or more acres in size adjacent to an all-weather public road" for "five or more acres in size adjacent to a public highway" in the last proviso.

1978—Subsec. (b)(2). Pub. L. 95–619 added provision that the amount insurable under this section could be increased by up to 20 per cent if such increase were necessary to account for the increased cost of a residence due to the installation of a solar energy system.

Subsec. (c). Pub. L. 95–557, § 101(c)(2), substituted "subsections (n) and (k) of this section are not required" for "subsection (n) of this section is not required" and "subsection (n) or (k) of this section exceed 1 per centum" for "subsection (n) of this section exceed 1 per centum".

Subsec. (k). Pub. L. 95–557, § 101(c)(1), generally revised subsec. (k) to meet the credit needs of owners of from one-to-four family properties who can afford market rate borrowing by insuring one hundred percent of the loan amount and covering the cost of rehabilitation, rehabilitation and refinancing existing debt, or the purchase and rehabilitation of properties.

1977—Subsec. (b)(2). Pub. L. 95–128, §§ 303(a), 304(a), substituted "$60,000" for "$45,000", "$65,000" for "$48,750" wherever appearing, and "$75,000" for "$56,000" in provisions preceding cl. (i); struck out in cl. (i) following "97 per centum" parenthetical text "(but, in any case where the dwelling is not approved for mortgage insurance prior to the beginning of construction, unless the construction of the dwelling was completed more than one year prior to the application for mortgage insurance, or the dwelling was approved for guaranty, insurance, or direct loan under chapter 37 of title 38 prior to the beginning of construction, 90 per centum)"; substituted in first sentence "and (ii) 95 per centum of such value in excess of $25,000" for "(ii) 90 per centum of such value in excess of $25,000 but not in excess of $35,000, and (iii) 80 per centum of such value in excess of $35,000" and in second sentence "and (ii) 95 per centum of such value in excess of $25,000" for "(ii) 90 per centum of such value in excess of $25,000 but not in excess of $35,000, and (iii) 85 per centum of such value in excess of $35,000"; and inserted following the second sentence provision limiting the mortgage to 90 per centum of the entire appraised value of the property as of the date the mort-

gage is accepted for insurance where the dwelling is not approved for mortgage insurance prior to the beginning of construction.

Subsec. (c). Pub. L. 95-128, § 305, inserted proviso respecting premium charges for insurance under subsec. (n) of this section.

Subsec. (i). Pub. L. 95-128, § 303(g), substituted provision which authorizes the Secretary to insure a mortgage hereunder which involves a principal obligation not in excess of 75 per centum of the limit on the principal obligation applicable to a one-family residence under subsec. (b) of this section for prior limitation of such insurance on a mortgage which involved a principal obligation not in excess of $16,200.

Subsec. (o). Pub. L. 95-128, § 307, added subsec. (o).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 104 of Pub. L. 95-557 provided that: "The amendments made by this title [enacting section 5319 of Title 42, The Public Health and Welfare, amending sections 1706e, 1709, and 1717 of this title, and sections 1452b, 5304, 5305, 5307, and 5318 of Title 42] shall become effective October 1, 1978."

STUDIES OF MORTGAGE INSURANCE PREMIUMS AND ALTERNATIVES TO STATUTORY MORTGAGE AMOUNTS

Section 309 of Pub. L. 96-153 provided that:

"(a) The Secretary of Housing and Urban Development (Hereinafter referred to as the 'Secretary') shall conduct a study of the relative risks of loss which exist with respect to the various classes of mortgages which may be insured under sections 203(b) [subsec. (b) of this section] and 213 [section 1715e of this title] of the National Housing Act. Such study shall be conducted for the purpose of making recommendations on the advisability of reducing, in accordance with sound actuarial and accounting practices, some or all of the mortgage insurance premiums required for such classes of mortgages. The Secretary shall transmit such recommendations to the Congress within eighteen months from the date of the enactment of this Act [Dec. 21, 1979].

"(b) The Secretary shall conduct a study of alternatives to the present system of fixed statutory maximum amounts for mortgages insured by the Department of Housing and Urban Development under titles I and II of the National Housing Act [subchapters I and II of this chapter]. Such study shall include an examination of possible alternatives, including but not limited to flexible mortgage ceilings, prototype cost limits, ceilings based on regional housing costs, sales prices of homes, and construction costs. The Secretary shall report to the Congress on the results of such study, together with recommendations for legislation, no later than March 1, 1980."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1706c, 1707, 1708, 1709-1, 1710, 1711, 1712, 1713, 1715e, 1715k, 1715*l*, 1715m, 1715q, 1715x, 1715w, 1715y, 1715z-2, 1715z-3, 1715z-10, 1717, 1723e, 1735, 1735b, 1735c, 1748h-1, 1748h-2, 1750b, 2703 of this title; title 15 section 77d; title 38 section 1803; title 42 sections 1485, 1487, 1490a.

§ 1709-1. Maximum interest rates for certain programs; expiration date; guaranteed or insured home loans to veterans; mobile home loans

Notwithstanding the provisions of sections 1709(b)(5), 1713(c)(3), 1715e(d), 1715k(d)(4), 1715k(h)(2)(iii), 1715*l*(d)(5), 1715v(c)(6), 1715w(d)(3)(B), 1715y(f), 1715z(j)(2)(C), 1715z-1(j)(4)(B), 1715z-5(c)(4), 1715z-6(b)(3), 1715z-7(d)(3)(B), and 1749aaa(c)(4) of this title regarding the maximum interest rates which the Secretary of Housing and Urban Development may establish for certain mortgage insurance programs authorized by this chapter, the Secretary is authorized, until October 1, 1980, to set the maximum interest rates for such programs at not to exceed such per centum per annum on the amount of the principal obligation outstanding at any time as he finds necessary to meet the mortgage market, and during that time the interest rates so set shall be deemed to be for all purposes the interest rates in effect under the provisions of said section 1709(b)(5) and the other sections referred to above: *Provided*, That in determining the rate to be applicable for the said section 1709(b)(5) program, the Secretary shall consult with the Administrator of Veterans' Affairs regarding the rate which the Administrator considers necessary to meet the mortgage market for guaranteed or insured home loans to veterans under chapter 37 of title 38. Notwithstanding the provisions of section 1703(b) of this title regarding the maximum interest rate which may be established for obligations with respect to which insurance is granted to financial institutions under section 1703 of this title, the Secretary of Housing and Urban Development is also authorized, until the date specified in the preceding sentence, to set the maximum interest rate for obligations with respect to which insurance is granted under such section at such level as he finds necessary to meet the loan market.

(As amended Pub. L. 95-60, § 2, June 30, 1977, 91 Stat. 257; Pub. L. 95-80, § 2, July 31, 1977, 91 Stat. 339; Pub. L. 95-128, title III, § 302, Oct. 12, 1977, 91 Stat. 1131; Pub. L. 95-406, § 2, Sept. 30, 1978, 92 Stat. 880; Pub. L. 95-557, title III, § 302, Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96-71, § 2, Sept. 28, 1979, 93 Stat. 501; Pub. L. 96-105, § 2, Nov. 8, 1979, 93 Stat. 794; Pub. L. 96-153, title III, § 302, Dec. 21, 1979, 93 Stat. 1112.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "that Act", referring to the National Housing Act, act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

1979—Pub. L. 96-153 substituted "October 1, 1980" for "December 1, 1979".

Pub. L. 96-105 substituted "December 1, 1979" for "November 1, 1979".

Pub. L. 96-71 substituted "November 1, 1979" for "October 1, 1979".

1978—Pub. L. 95-557 substituted "October 1, 1979" for "November 1, 1978".

Pub. L. 95-406 substituted "November 1, 1978" for "October 1, 1978".

1977—Pub. L. 95-128 substituted "October 1, 1978" for "October 1, 1977".

Pub. L. 95-80 substituted "October 1, 1977" for "August 1, 1977".

Pub. L. 95-60 substituted "August 1, 1977" for "June 30, 1977".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 sections 1490a, 3535.

§ 1713. Rental housing insurance

[*See main edition for text of* (a) *and* (b)]

(c) Eligibility for insurance; mortgage limits

To be eligible for insurance under this section a mortgage on any property or project shall involve a principal obligation in an amount—

[*See main edition for text of (1) and (2)*]

(3) Not to exceed, for such part of the property or project as may be attributable to dwelling use (excluding exterior land improvements as defined by the Secretary), $19,500 per family unit without a bedroom, $21,600 per family unit with one bedroom, $25,800 per family unit with two bedrooms, $31,800 per family unit with three bedrooms, and $36,000 per family unit with four or more bedrooms, or not to exceed $8,000 per space; except that as to projects to consist of elevator type structures the Secretary may in his discretion, increase the dollar amount limitations per family unit to not to exceed $22,500 per family unit without a bedroom, $25,200 per family unit with one bedroom, $30,900 per family unit with two bedrooms, $38,700 per family unit with three bedrooms, and $43,758 per family unit with four or more bedrooms, as the case may be, to compensate for the higher costs incident to the construction of elevator-type structures of sound standards of construction and design; and except that the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this paragraph by not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum in such an area. Notwithstanding any other provision of this paragraph, the amount which may be insured under this section may be increased by up to 20 percent if such increase is necessary to account for the increased cost of the project due to the installation of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) therein.

The mortgage shall provide for complete amortization by periodic payments within such term as the Secretary shall prescribe, and shall bear interest (exclusive of premium charges for insurance) at not to exceed 5¼ per centum per annum on the amount of the principal obligation outstanding at any time, or not to exceed such per centum per annum not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the mortgage upon such terms and conditions as he may prescribe and the mortgage may provide for such release. No mortgage shall be accepted for insurance under this section or section 1715a of this title unless the Secretary finds that the property or project, with respect to which the mortgage is executed, is economically sound. Such property or project may include five or more family units and may include such commercial and community facilities as the Secretary deems adequate to serve the occupants.

[*See main edition for text of (d) to (r)*]

(As amended Oct. 31, 1978, Pub. L. 95-557, title III, § 311(a), 92 Stat. 2098; Nov. 9, 1978, Pub. L. 95-619, title II, § 248(b), 92 Stat. 3235; Dec. 21, 1979, Pub. L. 96-153, title III, §§ 313(b), 314, 93 Stat. 1117.)

AMENDMENTS

1979—Subsec. (c)(3). Pub. L. 96-153, §§ 313(b), 314, in the first sentence of the first unnumbered paragraph substituted "$8,000" for "$3,900", "75 per centum" for "50 per centum" and added exception that where the Secretary determines it necessary on a project by project basis, the dollar amount limitations may be exceeded by not to exceed 90 per centum in such an area.

1978—Subsec. (c). Pub. L. 95-557 substituted "may include five" for "may include eight" in concluding paragraph.

Subsec. (c)(3). Pub. L. 95-619 provided that the amount insurable under this section could be increased by up to 20 per cent if such increase were necessary to account for the increased cost of a residence due to the installation of a solar energy system.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 1464, 1709-1, 1710, 1715c, 1715e, 1715k, 1715*l*, 1715r, 1715v, 1715w, 1715x, 1715y, 1715z-3, 1715z-6, 1715z-7, 1717, 1723e, 1731b, 1735, 1743, 1744, 1748b, 1748h-2, 1749aa, 1749hh, 1749aaa-2, 1750g of this title; title 42 sections 1594a, 3035g, 3535.

§ 1715c. Labor standards

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1715e, 1750b of this title; title 42 section 3310.

§ 1715e. Cooperative housing insurance

[*See main edition for text of (a)*]

(b) Eligibility conditions for projects under subsection (a)(1) of this section

To be eligible for insurance under this section a mortgage on any property or project of a corporation or trust of the character described in paragraph (1) of subsection (a) of this section shall involve a principal obligation in an amount—

[*See main edition for text of (1)*]

(2) not to exceed, for such part of the property or project as may be attributable to dwelling use (excluding exterior land improvements as defined by the Secretary), $19,500 per family unit without a bedroom, $21,600 per family unit with one bedroom, $25,800 per family unit with two bedrooms, $31,800 per family unit with three bedrooms, and $36,000 per family unit with four or more bedrooms, and not to exceed 98 per centum of the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed physical improvements are completed: *Provided*, That as to projects to consist of elevator-type structures the Secretary may, in his discretion, increase the dollar amount limitations per family unit to not to exceed $22,500 per family unit without a bedroom, $25,200 per family unit with one bedroom, $30,900 per family unit with two bedrooms, $38,700 per

family unit with three bedrooms, and $43,758 per family unit with four or more bedrooms, as the case may be, to compensate for the higher costs incident to the construction of elevator-type structures of sound standards of construction and design: *Provided further,* That the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this paragraph by not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum in such an area: *Provided further,* That in the case of a mortgagor of the character described in paragraph (3) of subsection (a) of this section the mortgage shall involve a principal obligation in an amount not to exceed 90 per centum of the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed physical improvements are completed: *And provided further,* That upon the sale of a property or project by a mortgagor of the character described in paragraph (3) of subsection (a) of this section to a nonprofit cooperative ownership housing corporation or trust within two years after the completion of such property or project the mortgage given to finance such sale shall involve a principal obligation in an amount not to exceed the maximum amount computed in accordance with this subsection without regard to the preceding proviso.

[*See main edition for text of* (c) *to* (o)]

(As amended Dec. 21, 1979, Pub. L. 96-153, title III, § 314, 93 Stat. 1117.)

AMENDMENTS

1979—Subsec. (b)(2). Pub. L. 96-153 in the second proviso substituted "75 per centum" for "50 per centum", and added exception that the dollar amount limitations may be exceeded not to exceed 90 per centum where the Secretary determines it necessary.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1709-1, 1710, 1715c, 1715n, 1715q, 1715r, 1715y, 1715z, 1715z-6, 1717, 1720, 1723e, 1731b, 1735c of this title; title 42 section 3535.

§ 1715h. General insurance authorization; termination date

Except with respect to the insurance of a loan or mortgage pursuant to section 1703, 1715*l*, 1715z, 1715z-1 of this title, subchapter VIII, IX-A, or IX-B of this chapter (subject to any limitations thereunder on the time of such insurance), no loan or mortgage shall be insured under any provision of this chapter after September 30, 1980, except pursuant to a commitment to insure before that date.

(As amended June 30, 1977, Pub. L. 95-60, § 1(b), 91 Stat. 257; July 31, 1977, Pub. L. 95-80, § 1(b), 91 Stat. 339; Oct. 12, 1977, Pub. L. 95-128, title III, § 301(b), 91 Stat. 1131; Sept. 30, 1978, Pub. L. 95-406, § 1(b), 92 Stat. 879; Oct. 31, 1978, Pub. L. 95-557, title III, § 301(b), 92 Stat. 2096; Sept. 28, 1979, Pub. L. 96-71, § 1(b), 93 Stat. 501; Nov. 8, 1979, Pub. L. 96-105, § 1(b), 93 Stat. 794; Dec. 21, 1979, Pub. L. 96-153, title III, § 301(b), 93 Stat. 1111.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act June 27, 1934, ch. 847, 48 Stat. 1246, as amended known as the National Housing Act. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

1979—Pub. L. 96-153 substituted "September 30, 1980" for "November 30, 1979".

Pub. L. 96-105 substituted "November 30, 1979" for October 31, 1979".

Pub. L. 96-71 substituted "October 31, 1979" for September 30, 1979".

1978—Pub. L. 95-557 substituted "September 30, 1979" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

1977—Pub. L. 95-128 substituted "September 30, 1978" for "September 30, 1977".

Pub. L. 95-80 substituted "September 30, 1977" for "July 31, 1977".

Pub. L. 95-60 substituted "July 31, 1977" for "June 30, 1977".

§ 1715k. Rehabilitation and neighborhood conservation housing insurance

[*See main edition for text of* (a) *to* (c)]

(d) Eligibility for insurance; conditions; limits

To be eligible for insurance under this section a mortgage shall meet the following conditions:

(1) The mortgaged property shall—

(A) be located in (i) the area of a slum clearance and urban redevelopment project covered by a Federal-aid contract executed or a prior approval granted, pursuant to title I of the Housing Act of 1949 [42 U.S.C. 1450 et seq.] before August 2, 1954, or (ii) an urban renewal area (as defined in title I of the Housing Act of 1949, as amended), or (iii) the area of an urban renewal project assisted under section 111 of the Housing Act of 1949 [42 U.S.C. 1462], or (iv) an area in which a program of concentrated code enforcement activities is being carried out pursuant to section 117 of the Housing Act of 1949 [42 U.S.C. 1468]: *Provided,* That, in the case of an area within the purview of clause (i) or (ii) of this subparagraph, a redevelopment plan or an urban renewal plan (as defined in title I of the Housing Act of 1949, as amended), as the case may be, has been approved for such area by the governing body of the locality involved and by the Secretary of Housing and Urban Development and the Secretary has determined that such plan conforms to a general plan for the locality as a whole and that there exist the necessary authority and financial capacity to assure the completion of such redevelopment or urban renewal plan: *And provided further,* That, in the case of an area within the purview of clause (iii) of this subparagraph, an urban renewal plan (as required for projects assisted under such section 111 [42 U.S.C. 1462]) has been approved for such area by such governing

body and by the Secretary, and the Secretary has determined that such plan conforms to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements, and that there exist the necessary authority and financial capacity to assure the completion of such urban renewal plan, and

[*See main edition for text of* (B); (2)]

(3) The mortgage shall—

(A)(i) involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed $67,500 in the case of property upon which there is located a dwelling designed principally for a one-family residence; or $76,000 in the case of a two-family residence; or $92,000 in the case of a three-family residence; or $107,000 in the case of a four-family residence; or in the case of a dwelling designed principally for residential use for more than four families (but not exceeding such additional number of family units as the Secretary may prescribe) $107,000 plus not to exceed $8,250 for each additional family unit in excess of four located on such property; and not to exceed an amount equal to the sum of (1) 97 per centum (but, in any case where the dwelling is not approved for mortgage insurance prior to the beginning of construction, unless the construction of the dwelling was completed more than one year prior to the application for mortgage insurance, 90 per centum) of $25,000 of the Secretary's estimate of replacement cost of the property, as of the date the mortgage is accepted for insurance and (2) 95 per centum of such value in excess of $25,000: *Provided*, That in the case of properties other than new construction, the foregoing limitations upon the amount of the mortgage shall be based upon the sum of the estimated cost of repair and rehabilitation and the Secretary's estimate of the value of the property before repair and rehabilitation rather than upon the Secretary's estimate of the replacement cost: *Provided further*, That if the mortgagor is a veteran and the mortgage to be insured under this section covers property upon which there is located a dwelling designed principally for a one-family residence, the principal obligation may be in an amount equal to the sum of (1) 100 per centum of $25,000 of the Secretary's estimate of replacement cost of the property, as of the date the mortgage is accepted for insurance and (2) 95 per centum of such value in excess of $25,000. As used herein, the term "veteran" means any person who served on active duty in the Armed Forces of the United States for a period of not less than ninety days (or is certified by the Secretary of Defense as having performed extrahazardous service), and who was discharged or released therefrom under conditions other than dishonorable;

[*See main edition for text of* (ii) *to* (iv)]

(B) [*See main edition for text of* (i) *and* (ii)]

(iii) not exceed, for such part of the property or project as may be attributable to dwelling use (excluding exterior land improvements as defined by the Secretary), $19,500 per family unit without a bedroom, $21,600 per family unit with one bedroom, $25,800 per family unit with two bedrooms, $31,800 per family unit with three bedrooms, and $36,000 per family unit with four or more bedrooms; except that as to projects to consist of elevator-type structures the Secretary may in his discretion, increase the dollar amount limitations per family unit to not to exceed $22,500 per family unit without a bedroom, $25,200 per family unit with one bedroom, $30,900 per family unit with two bedrooms $38,700 per family unit with three bedrooms, and $43,758 per family unit with four or more bedrooms, as the case may be, to compensate for the higher costs incident to the construction of elevator-type structures of sound standards of construction and design; and except that with respect to rehabilitation projects involving not more than five family units, the Secretary may by regulation increase by 25 per centum any of the foregoing dollar amount limitations contained in this clause which are applicable to units with two, three, or four or more bedrooms: *Provided*, That the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this clause (as determined after the application of the preceding proviso) by not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum in such an area: *Provided further*, That nothing contained in this subparagraph shall preclude the insurance of mortgages covering existing multifamily dwellings to be rehabilitated or reconstructed for the purposes set forth in subsection (a) of this section; and

[*See main edition for text of* (iv); (4); *and* (e) *to* (h)]

(As amended Apr. 30, 1977, Pub. L. 95-24, title I, § 105(b), 91 Stat. 56; Oct. 12, 1977, Pub. L. 95-128, title III, §§ 303(b), 304(b), 91 Stat. 1132, 1133; Dec. 21, 1979, Pub. L. 96-153, title III, §§ 312(b), 314, 93 Stat. 1116, 1117.)

AMENDMENTS

1979—Subsec. (d)(3)(A)(i). Pub. L. 96-153, § 312(b), substituted "$67,500" for "$60,000", "$76,000" for "$65,000" where it first appeared, "$92,000" for "$65,000" where it appeared the second time, "$107,000" for "$75,000", and "$8,250" for "$7,700".

Subsec. (d)(3)(B)(iii). Pub. L. 96-153, § 314, in the first proviso substituted "75 per centum" for "50 per centum" and added exception that the dollar amount limitations may be exceeded not to exceed 90 per centum where the Secretary determines it to be necessary.

1977—Subsec. (d)(1)(A)(ii). Pub. L. 95-24 struck out "in a community respecting which the Secretary of

Housing and Urban Development has made the determination provided for by section 101(c) of the Housing Act of 1949, as amended following "(as defined in title I of the Housing Act of 1949, as amended)".

Subsec. (d)(3)(A). Pub. L. 95-128 substituted "$60,000" for "$45,000", "$65,000" for "$48,750" and "$75,000" for "$56,000" wherever appearing in provisions preceding cl. (1); substituted in text preceding first proviso "and (2) 95 per centum of such value in excess of $25,000" for ", (2) 90 per centum of such replacement cost in excess of $25,000 but not in excess of $35,000, (3) 80 per centum of such replacement cost in excess of $35,000" and in second proviso "and (2) 95 per centum of such value in excess of $25,000" for ", (2) 90 per centum of such replacement cost in excess of $25,000 but not in excess of $35,000, and (3) 85 per centum of such replacement cost in excess of $35,000".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1709, 1709-1, 1713, 1715c, 1715*l*, 1715o, 1715q, 1715r, 1715w, 1715z-2, 1715z-5, 1717, 1720, 1731b of this title.

§ 1715*l*. Housing for moderate income and displaced families

[*See main edition for text of* (a) *to* (c)]

(d) Eligibility for insurance; conditions; limits

To be eligible for insurance under this section, a mortgage shall—

[*See main edition for text of* (1)]

(2) be secured by property upon which there is located a dwelling conforming to applicable standards prescribed by the Secretary under subsection (f) of this section, and meeting the requirements of all State laws, or local ordinances or regulations, relating to the public health or safety, zoning, or otherwise, which may be applicable thereto, and shall involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount (A) not to exceed (i) $31,000 (or $36,000, if the mortgagor's family includes five or more persons) in the case of a property upon which there is located a dwelling designed principally for a single-family residence, (ii) $35,000 in the case of a property upon which there is located a dwelling designed principally for a two-family residence, (iii) $48,600 in the case of a property upon which there is located a dwelling designed principally for a three-family residence, or (iv) $59,400 in the case of a property upon which there is located a dwelling designed principally for a four-family residence: *Provided,* That a mortgage secured by property upon which there is located a dwelling designed principally for a two-, three-, or four-family residence shall not be insured under this section except in the case of a dwelling for occupancy by the mortgagor: *Provided further,* That the Secretary may increase the foregoing amounts to not to exceed $36,000 (or $42,000 if the mortgagor's family includes five or more persons), $45,000, $57,600, and $68,400, respectively, in any geographical area where he finds that cost levels so require; and (B) not to exceed the appraised value of the property (as of the date the mortgage is accepted for insurance): *Provided further,* That (i) if the mortgagor is the owner and an occupant of the property at the time of insurance, (1) in the case of a displaced family, he shall have paid on account of the property at least $200 in the case of a single-family dwelling, $400 in the case of a two-family dwelling, $600 in the case of a three-family dwelling, and $800 in the case of a four-family dwelling, or (2) in the case of any other family, he shall have paid on account of the property at least 3 per centum of the Secretary's estimate of its acquisition cost, in cash or its equivalent; which amount in either instance may include amounts to cover settlement costs and initial payments for taxes, hazard insurance, mortgage insurance premium, and other prepaid expenses; or (ii) in the case of repair and rehabilitation, the amount of the mortgage shall not exceed the sum of the estimated cost of repair and rehabilitation and the Secretary's estimate of the value of the property before repair and rehabilitation, except that in no case involving refinancing shall such mortgage exceed such estimated cost of repair and rehabilitation and the amount (as determined by the Secretary) required to refinance existing indebtedness secured by the property: *Provided further,* That nothing contained herein shall preclude the Secretary from issuing a commitment to insure, and insuring a mortgage pursuant thereto, where the mortgagor is not the owner and an occupant of the property, if the property is to be built or acquired and repaired or rehabilitated for sale, and the insured mortgage financing is required to facilitate the construction, or the repair or rehabilitation, of the dwelling and to provide financing pending the subsequent sale thereof to a qualified owner who is also an occupant thereof, but in such instances the mortgage shall not exceed 85 per centum of the appraised value: *Provided further,* That, if the mortgagor is the owner and an occupant of the property, such mortgagor shall to the maximum extent feasible be given the opportunity to contribute the value of his labor as equity in such dwelling; or

(3) if executed by a mortgagor which is a public body or agency (and, except with respect to a project assisted or to be assisted pursuant to section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], which certifies that it is not receiving financial assistance from the United States exclusively pursuant to such Act [42 U.S.C. 1437 et seq.]) a cooperative (including an investor-sponsor who meets such requirements as the Secretary may impose to assure that the consumer interest is protected), or a limited dividend corporation (as defined by the Secretary), or a private nonprofit corporation or association, or other mortgagor approved by the Secretary, and regulated or supervised under Federal or State laws or by political subdivisions of States, or agencies thereof, or by the Secretary under a regulatory agreement or otherwise, as to rents, charges, and methods of operation, in such form and in such manner as in the opinion of the Secretary will effectuate the purposes of this section—

(i) Repealed. Pub. L. 93-383, title III, § 304(e)(1), Aug. 22, 1974, 88 Stat. 678.

(ii) not exceed, for such part of the property or project as may be attributable to dwelling use (excluding exterior land improvements as defined by the Secretary) $21,563 per family unit without a bedroom, $24,662 per family unit with one bedroom, $29,984 per family unit with two bedrooms, $38,379 per family unit with three bedrooms, and $42,756 per family unit with four or more bedrooms; except that as to projects to consist of elevator-type structures the Secretary may, in his discretion, increase the dollar amount limitations per family unit to not to exceed $22,692 per family unit without a bedroom, $26,012 per family unit with one bedroom, $31,631 per family unit with two bedrooms, $40,919 per family unit with three bedrooms, and $44,917 per family unit with four or more bedrooms, as the case may be, to compensate for the higher costs incident to the construction of elevator-type structures of sound standards of construction and design; and except that the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this clause by not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum in such an area; and

[*See main edition for text of* (iii)]

(4) if executed by a mortgagor and which is approved by the Secretary—

(i) Repealed. Pub. L. 93-383, title III, § 304(e)(2), Aug. 22, 1974, 88 Stat. 678.

(ii) not exceed, for such part of the property or project as may be attributable to dwelling use (excluding exterior land improvements as defined by the Secretary), $19,406 per family unit without a bedroom, $22,028 per family unit, with one bedroom, $26,625 per family unit with two bedrooms, $33,420 per family unit with three bedrooms, and $37,870 per family unit with four or more bedrooms; except that as to projects to consist of elevator-type structures the Secretary may, in his discretion, increase the dollar amount limitations per family unit to not to exceed $20,962 per family unit without a bedroom, $24,030 per family unit with one bedroom, $29,220 per family unit with two bedrooms, $37,800 per family unit with three bedrooms, and $41,494 per family unit with four or more bedrooms, as the case may be, to compensate for the higher costs incident to the construction of elevator-type structures of sound standards of construction and design; and except that the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this clause by not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum in such an area;

[*See main edition for text of* (iii) *and* (iv), (5) *and* (6); (e)]

(f) Compliance with standards; nondwelling facilities in projects in urban renewal areas; number of family units; premium charges; housing for low-income purchasers; expiration of mortgage insurance authority; definition of "family"; single occupants in subsection (d)(3) housing; use of certain housing facilities for classroom purposes

The property or project shall comply with such standards and conditions as the Secretary may prescribe to establish the acceptability of such property for mortgage insurance and may include such commercial and community facilities as the Secretary deems adequate to serve the occupants: *Provided,* That in the case of any such property or project located in an urban renewal area, the provisions of section 1715k(d)(3)(B)(iv) of this title shall apply with respect to the nondwelling facilities which may be included in the mortgage: *Provided further,* That, in the case of a mortgage which bears interest at the below-market interest rate prescribed in the proviso of subsection (d)(5) of this section, the provisions of section 1715k(d)(3)(B)(iv) of this title shall only apply if the mortgagor waives the right to receive dividends on its equity investment in the portion thereof devoted to commercial facilities.

A property or project covered by a mortgage insured under the provisions of subsection (d)(3) or (d)(4) of this section shall include five or more family units: *Provided,* That such units, in the case of a project designed primarily for occupancy by displaced, elderly, or handicapped families, need not, with the approval of the Secretary, contain kitchen facilities, and such projects may include central dining and other shared facilities. The Secretary is authorized to adopt such procedures and requirements as he determines are desirable to assure that the dwelling accommodations provided under this section are available to displaced families. Notwithstanding any provision of this chapter, the Secretary, in order to assist further the provision of housing for low and moderate income families, in his discretion and under such conditions as he may prescribe, may insure a mortgage which meets the requirements of subsection (d)(3) of this section as in effect after June 30, 1961, or which meets the requirements of subsection (h), (i), or (j) of this section with no premium charge, with a reduced premium charge, or with a premium charge for such period or periods during the time the insurance is in effect as the Secretary may determine, and there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to reimburse the General Insurance Fund for any net losses in connection with such insurance. No mortgage shall be insured under this section after September 30, 1980, except pursuant to a commitment to insure before that date, or except a mortgage covering property which the Secretary finds

will assist in the provision of housing for displaced families. Any person who is sixty-two years of age or over, or who is a handicapped person within the meaning of section 1701q of this title, or who is a displaced person, shall be deemed to be a family within the meaning of the terms "family" and "families" as those terms are used in this section. Low- and moderate-income persons who are less than 62 years of age shall be eligible for occupancy of dwelling units in a project financed with a mortgage insured under subsection (d)(3) of this section. In any case in which it is determined in accordance with regulations of the Secretary that facilities in existence or under construction on December 31, 1970, which could appropriately be used for classroom purposes are available in any such property or project and that public schools in the community are overcrowded due in part to the attendance at such schools of residents of the property or project, such facilities may be used for such purposes to the extent permitted in such regulations (without being subject to any of the requirements of the proviso in section 1715k(d)(3)(B)(iv) of this title except the requirement that the project be predominantly residential).

As used in this section the terms "displaced family", "displaced families", and "displaced person" shall mean a family or families, or a person, displaced from an urban renewal area, or as a result of governmental action, or as a result of a major disaster as determined by the President pursuant to the Disaster Relief Act of 1974 [42 U.S.C. 5121 et seq.].

[*See main edition for text of (g) to (j)*]

(As amended Apr. 30, 1977, Pub. L. 95-24, title I, § 106, 91 Stat. 56; June 30, 1977, Pub. L. 95-60, § 1(c), 91 Stat. 257; July 31, 1977, Pub. L. 95-80, § 1(c), 91 Stat. 339; Oct. 12, 1977, Pub. L. 95-128, title III, §§ 301(c), 303(c), 91 Stat. 1131, 1132; Sept. 30, 1978, Pub. L. 95-406, § 1(c), 92 Stat. 879; Oct. 31, 1978, Pub. L. 95-557, title III, §§ 301(c), 325, 92 Stat. 2096, 2104; Sept. 28, 1979, Pub. L. 96-71, § 1(c), 93 Stat. 501; Nov. 8, 1979, Pub. L. 96-105, § 1(c), 93 Stat. 794; Dec. 21, 1979, Pub. L. 96-153, title III, §§ 301(c), 314, 93 Stat. 1111, 1117.)

AMENDMENTS

1979—Subsec. (d)(3)(ii). Pub. L. 96-153, § 314, substituted "75 per centum" for "50 per centum" and added exception that the dollar amount limitations may be exceeded not to exceed 90 per centum where the Secretary determines it to be necessary.

Subsec. (d)(4)(ii). Pub. L. 96-153, § 314, substituted "75 per centum" for "50 per centum" and added exception that the dollar amount limitations may be exceeded by not to exceed 90 per centum where the Secretary determines it to be necessary.

Subsec. (f). Pub. L. 96-153 substituted "September 30, 1980" for "November 30, 1979".

Pub. L. 96-105 substituted "November 30, 1979" for "October 31, 1979".

Pub. L. 96-71 substituted "October 31, 1979" for "September 30, 1979."

1978—Subsec. (d)(3)(ii). Pub. L. 95-557, § 325(a), substituted "$21,563", "$24,662", "$29,984", "$38,379", and "$42,756" for "$16,860", "$18,648", "$22,356", "$28,152" and "$31,884", respectively, and "$22,692", "$26,012", "$31,631", "$40,919", and "$44,917" for "$19,680", "$22,356", "$26,496", "$33,120", and "$38,400", respectively.

Subsec. (d)(4)(ii). Pub. L. 95-557, § 325(b), substituted "$19,406", "$22,028", "$26,625", "$33,420", and "$37,870" for "$18,450", "$20,625", "$24,630", "$29,640" and "$34,846", respectively.

Subsec. (f). Pub. L. 95-557, § 301(c), substituted "September 30, 1979" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

1977—Subsec. (d)(2)(A). Pub. L. 95-128, § 303(c), substituted "$31,000" for "$25,000", "$36,000" for "$29,000" in two instances, "$42,000" for "$33,000", "$35,000" for "$28,000", "$48,600" for "$38,880", "$59,400" for "$47,520", "$45,000" for "$36,000", "$57,600" for "$46,080" and "$68,400" for "$54,720".

Subsec. (d)(4). Pub. L. 95-24 struck out "other than a mortgagor referred to in subsection (d)(3) of this section," following "if executed by a mortgagor".

Subsec. (f). Pub. L. 95-128, § 301(c), substituted "September 30, 1978" for "September 30, 1977".

Pub. L. 95-80 substituted "September 30, 1977" for "July 31, 1977".

Pub. L. 95-60 substituted "July 31, 1977" for "June 30, 1977".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1701s, 1701u, 1701z-4, 1701z-11, 1709-1, 1713, 1715c, 1715h, 1715m, 1715n, 1715o, 1715r, 1715z, 1715z-1, 1715z-1a, 1715z-2, 1715z-6, 1717, 1720, 1731b, 1735b of this title; title 26 section 1250; title 42 sections 1452b, 1457, 2982c, 8231.

§ 1715m. Mortgage insurance for servicemen

[*See main edition for text of (a)*]

(b) Eligibility of mortgage for insurance

To be eligible for insurance under this section a mortgage shall—

[*See main edition for text of (1)*]

(2) involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed $67,500, except that in the case of a mortgage meeting the requirements of section 1709(i) or section 1715*l*(d)(2) of this title such principal obligation shall not exceed the maximum limits prescribed for such section;

(3) have a principal obligation not in excess of the sum of (i) 97 per centum of $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance, and (ii) 95 per centum of such value in excess of $25,000; and

[*See main edition for text of (4); (c) to (g)*]

(As amended Oct. 12, 1977, Pub. L. 95-128, title III, §§ 303(d), 304(c), 91 Stat. 1132, 1133; Dec. 21, 1979, Pub. L. 96-153, title III, § 312(c), 93 Stat. 1116.)

AMENDMENTS

1979—Subsec. (b)(2). Pub. L. 96-153 substituted "$67,500" for "$60,000".

1977—Subsec. (b). Pub. L. 95-128 substituted "$60,000" for "$45,000" in par. (2) and "and (ii) 95 per centum of such value in excess of $25,000" for "(ii) 90 per centum of such value in excess of $25,000 but not in excess of $35,000, and (iii) 80 per centum of such value in excess of $35,000" in par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1715q of this title; title 42 section 1594a-1.

§ 1715n. Miscellaneous mortgage insurance

[See main edition for text of (a) to (e)]

(f) Insurance of mortgages executed in connection with purchase of refinancing of existing multifamily housing project or the refinancing of existing debt of an existing hospital; terms and conditions for refinancing of property located in older declining urban areas

Notwithstanding any of the provisions of this chapter, the Secretary is authorized, in his discretion, to insure under any section of this subchapter a mortgage executed in connection with the purchase of refinancing of an existing multifamily housing project or the refinancing of existing debt of an existing hospital. In the case of refinancing under this subsection of multifamily housing project located in an older, declining urban area, the Secretary shall prescribe such terms and conditions as he deems necessary to assure that—

(1) the refinancing is used to lower the monthly debt service only to the extent necessary to assure the continued economic viability of the project, taking into account any rent reductions to be implemented by the mortgagor; and

(2) during the mortgage term no rental increases shall be made except those which are necessary to offset actual and reasonable operating expense increases or other necessary expense increases approved by the Secretary.

In the case of refinancing of an existing hospital the Secretary shall prescribe such terms and conditions as the Secretary deems necessary to assure that—

(A) the refinancing is employed to lower the monthly debt service costs (taking into account any fees or charges connected with such refinancing) of such existing hospital;

(B) the proceeds of any refinancing will be employed only to retire the existing indebtedness and pay the necessary cost of refinancing on such existing hospital;

(C) such existing hospital is economically viable; and

(D) such existing hospital has received such certifications from a State agency designated in accordance with section 291d(a)(1) or section 300m of title 42 for the State in which the hospital is located as the Secretary deems necessary and appropriate and comparable to the certification required for hospitals insured under section 1715z-7 of this title and that such State agency additionally certify that the services being provided by such existing hospital at the time of refinancing are appropriate as determined pursuant to section 300m-2(a)(6) title 42.

[See main edition for text of (g)]

(As amended Oct. 31, 1978, Pub. L. 95-557, title III, § 326, 92 Stat. 2104.)

AMENDMENTS

1978—Subsec. (f). Pub. L. 95-557 inserted "or the refinancing of existing debt of an existing hospital" following "housing project", substituted "multifamily housing project" for "housing project", and added provisions relating to the prescription of terms and conditions in the case of refinancing of an existing hospital.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1715z-3, 1715z-7, 1735c of this title; title 42 sections 2331, 2362.

§ 1715v. Insurance of mortgages for housing for elderly persons

[See main edition for text of (a) and (b)]

(c) Eligibility for insurance; maximum amount of mortgage; terms and conditions

To be eligible for insurance under this section, a mortgage to provide housing for elderly persons shall—

[See main edition for text of (1)]

(2) not exceed, for such part of the property or project as may be attributable to dwelling use (excluding exterior land improvements as defined by the Secretary), $18,450 per family unit without a bedroom, $20,625 per family unit with one bedroom, $24,630 per family unit with two bedrooms, $29,640 per family unit with three bedrooms, and $34,846 per family unit with four or more bedrooms; except that as to projects to consist of elevator-type structures the Secretary may, in his discretion, increase the dollar amount limitations per family unit to not to exceed $20,962 per family unit without a bedroom, $24,030 per family unit with one bedroom, $29,220 per family unit with two bedrooms, $37,800 per family unit with three bedrooms, and $41,494 per family unit with four or more bedrooms, as the case may be, to compensate for the higher costs incident to the construction of elevator-type structures of sound standards of construction and design; and except that the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this paragraph by not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum in such an area;

[See main edition for text of (3) to (7); (d) to (f)]

(As amended Dec. 21, 1979, Pub. L. 96-153, title III, § 314, 93 Stat. 1117.)

AMENDMENTS

1979—Subsec. (c)(2). Pub. L. 96-153, substituted "75 per centum" for "50 per centum" and added exception that the dollar amount limitations may be exceeded by not be exceed 90 per centum where the Secretary determines it to be necessary.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1701q, 1701s, 1709-1, 1715c, 1715q, 1715r, 1717 of this title; title 42 sections 3013, 3535.

§ 1715w. Mortgage insurance for nursing homes and intermediate care facilities

(a) Purpose

The purpose of this section is to assist in the provision of facilities for either of the following purposes or for a combination of such purposes:

(1) The development of nursing homes for the care and treatment of convalescents and other persons who are not acutely ill and do not need hospital care but who require skilled nursing care and related medical services, including additional facilities for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day.

(2) The development of intermediate care facilities for the care of persons who, while not in need of nursing home care and treatment, nevertheless are unable to live fully independently and who are in need of minimum but continuous care provided by licensed or trained personnel, including additional facilities for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day.

(b) Definitions

For the purposes of this section—

[*See main edition for text of (1)*]

(2) the term "intermediate care facility" means a proprietary facility or facility of a private nonprofit corporation or association licensed or regulated by the State (or, if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located) for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical or nursing services; (3) a "nursing home" or "intermediate care facility" may include such additional facilities as may be authorized by the Secretary for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day; and

(3) the term "mortgage" means a first mortgage on real estate in fee simple, or on the interest of either the lessor or lessee thereof (A) under a lease for not less than ninety-nine years which is renewable, or (B) under a lease having a period of not less than fifty years to run from the date the mortgage was executed. The term "first mortgage" means such classes of first liens as are commonly given to secure advances (including but not limited to advances during construction) on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby, and any mortgage may be in the form of one or more trust mortgages or mortgage indentures or deeds of trust, securing notes, bonds, or other credit instruments, and, by the same instrument or by a separate instrument, may create a security interest in initial equipment, whether or not attached to the realty. The term "mortgagor" shall have the meaning set forth in section 1713(a) of this title.

[*See main edition for text of (c)*]

(d) Terms and conditions; limitation on maximum amount of mortgage; amortization; interest; certification from State agency

In order to carry out the purposes of this section, the Secretary is authorized to insure any mortgage which covers a new or rehabilitated nursing home, or intermediate care facility or combined nursing home and intermediate care facility, including equipment to be used in its operation, subject to the following conditions:

[*See main edition for text of (1) to (3)*]

(4) The Secretary shall not insure any mortgage under this section unless he has received, from the State agency designated in accordance with section 291d(a)(1) or section 300m of title 42 for the State in which is located the nursing home or intermediate care facility or combined nursing home and intermediate care facility covered by the mortgage, a certification that (A) there is a need for such home or facility or combined home and facility, and (B) there are in force in such State or in the municipality or other political subdivision of the State in which the proposed home or facility or combined home and facility is to be located reasonable minimum standards of licensure and methods of operation governing it. No such mortgage shall be insured under this section unless the Secretary has received such assurance as he may deem satisfactory from the State agency that such standards will be applied and enforced with respect to any home or facility or combined home and facility located in the State for which mortgage insurance is provided under this section.

[*See main edition for text of (e) to (i)*]

(As amended Oct. 12, 1977, Pub. L. 95-128, title III, § 308(a), 91 Stat. 1135; Oct. 31, 1978, Pub. L. 95-557, title III, § 312, 92 Stat. 2099.)

CODIFICATION

Amendment of subsec. (b)(2) by Pub. L. 95-557, which included within the terms "nursing home" or "intermediate care facility" such additional facilities as authorized by the Secretary for non-resident care of the elderly and others who are able to live independently but who require care during the day, was designated by such amendment as "(3)" without reference to the existence of a prior subsec. (b)(3), defining the term "mortgage".

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-557, § 312(a), added ", including additional facilities for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day" after pars. (1) and (2).

Subsec. (b)(2). Pub. L. 95-557, § 312(b), inserted "(3) a 'nursing home' or 'intermediate care facility' may include such additional facilities as may be authorized by the Secretary for the non-resident care of elderly individuals and others who are able to live independently but who require care during the day".

1977—Subsec. (d)(4). Pub. L. 95-128 inserted reference to section 300m of title 42.

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1709–1, 1715c of this title; title 42 section 3013.

§ 1715y. Mortgage insurance for condominiums

[*See main edition for text of (a) and (b)*]

(c) Authorization; eligibility for insurance; conditions; limits

The Secretary is authorized, in his discretion and under such terms and conditions as he may prescribe (including the minimum number of family units in the project which shall be offered for sale and provisions for the protection of the consumer and the public interest), to insure any mortgage covering a one-family unit in a multifamily project and an undivided interest in the common areas and facilities which serve the project, if (1) the mortgage meets the requirements of this subsection and of section 1709(b) of this title, except as that section is modified by this subsection, (2) the project is or has been covered by a mortgage insured under any section (except section 1715e(a)(1) and (2) of this title) of this chapter, notwithstanding any requirements in any such section that the project be constructed or rehabilitated for the purpose of providing rental housing: *Provided*, That a one-family unit in a multifamily project involving eleven or less units, or twelve or more units in the case of a multifamily project the construction of which was completed more than a year prior to the application for mortgage insurance, shall be eligible for insurance without having been covered by a project mortgage, and (3) the mortgagor is acquiring, or has acquired, a family unit covered by a mortgage insured under this subsection for his own use and occupancy and will not own more than four one-family units covered by mortgages insured under this subsection. Any project proposed to be constructed or rehabilitated after June 30, 1961, with the assistance of mortgage insurance under this chapter, where the sale of family units is to be assisted with mortgage insurance under this subsection, shall be subject to such requirements as the Secretary may prescribe. To be eligible for insurance pursuant to this subsection, a mortgage shall (A) involve a principal obligation in an amount not to exceed $67,500, and not to exceed the sum of (i) 97 per centum (100 per centum if the mortgagor is a veteran as defined under section 1709(b)(2) of this title) of $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance and (ii) 95 per centum of such value in excess of $25,000, and (B) have a maturity satisfactory to the Secretary, but not to exceed, in any event, thirty-five years from the date of the beginning of amortization of the mortgage or three-fourths of the Secretary's estimate of the remaining economic life of the project, whichever is the lesser. In determining the amount of a mortgage in the case of a nonoccupant mortgagor the reference to paragraph (2) of section 1709(b) of this title in section 1709(b)(8) of this title shall be construed to refer to the preceding sentence in this subsection. The mortgage shall contain such provisions as the Secretary determines to be necessary for the maintenance of common areas and facilities and the multifamily project. The mortgagor shall have exclusive right to the use of the one-family unit covered by the mortgage and, together with the owners of other units in the multifamily project, shall have the right to the use of the common areas and facilities serving the project and the obligation of maintaining all such common areas and facilities. The Secretary may require that the rights and obligations of the mortgagor and the owners of other dwelling units in the project shall be subject to such controls as he determines to be necessary and feasible to promote and protect individual owners, the multifamily project, and its occupants. For the purposes of this subsection, the Secretary is authorized in his discretion and under such terms and conditions as he may prescribe to permit one-family units and interests in common areas and facilities in multifamily projects covered by mortgages insured under any section of this chapter (other than section 1715e(a)(1) and (2) of this title) to be released from the liens of those mortgages.

[*See main edition for text of (d)*]

(e) Eligibility for insurance of blanket mortgages of multifamily projects

To be eligible for insurance, a blanket mortgage on any multifamily project of a mortgagor of the character described in subsection (d) of this section shall involve a principal obligation in an amount—

[*See main edition for text of (1) and (2)*]

(3) not to exceed, for such part of the project as may be attributable to dwelling use (excluding exterior land improvements as defined by the Secretary), $19,500 per family unit without a bedroom, $21,600 per family unit with one bedroom, $25,800 per family unit with two bedrooms, $31,800 per family unit with three bedrooms, and $36,000 per family unit with four or more bedrooms; except that as to projects to consist of elevator-type structures the Secretary may, in his discretion, increase the dollar amount limitations per family unit to not to exceed $22,500 per family unit without a bedroom, $25,200 per family unit with one bedroom, $30,900 per family unit with two bedrooms, $38,700 per family unit with three bedrooms, and $43,758 per family unit with four or more bedrooms, as the case may be, to compensate for the higher costs incident to the construction of elevator-type structures of sound standards of construction and design; and except that the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this paragraph by not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum in such an area; and

[*See main edition for text of (4); (f) to (i)*]

(As amended Oct. 12, 1977, Pub. L. 95-128, title III, §§ 303(e), 304(d), 91 Stat. 1132, 1133; Oct. 31, 1978, Pub. L. 95-557, title III, § 313, 92 Stat. 2099; Dec. 21, 1979, Pub. L. 96-153, title III, §§ 312(c), 314, 93 Stat. 1116, 1117.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act", meaning act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, known as the National Housing Act. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-153, § 312(c), substituted "$67,500" for "$60,000".

Subsec. (e)(3). Pub. L. 96-153, § 314, substituted "75 per centum" for "50 per centum" and added exception that the dollar amount limitations may be exceeded not to exceed 90 per centum where the Secretary determines it to be necessary.

1978—Subsec. (c). Pub. L. 95-557 added "or twelve or more units in the case of a multifamily project the construction of which was completed more than a year prior to the application for mortgage insurance" following "less units" in clause (2) and "(100 per centum if the mortgagor is a veteran as defined under section 1709(b)(2) of this title)" following "97 per centum" in clause (A)(i).

1977—Subsec. (c). Pub. L. 95-128 substituted in cl. (A) "$60,000" for "$45,000" and "and (ii) 95 per centum of such value in excess of $25,000," for "(ii) 90 per centum of such value in excess of $25,000 but not in excess of $35,000, (iii) 80 per centum of such value in excess of $35,000".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1709-1, 1715c, 1715q, 1715r, 1715z, 1717, 1723e of this title; title 42 section 3535.

§ 1715z. Homeownership or membership in cooperative association for lower income families

(a) Authorization for periodic assistance payments to mortgagees; assistance to mobile home buyers

(1) For the purpose of assisting lower income families in acquiring homeownership or in acquiring membership in a cooperative association operating a housing project, the Secretary is authorized to make, and to contract to make, periodic assistance payments on behalf of such homeowners and cooperative members. The assistance shall be accomplished through payments to mortgagees holding mortgages meeting the special requirements specified in this section or which mortgages are assisted under a State or local program providing assistance through loans, loan insurance or tax abatement. In making such assistance available, the Secretary shall give preference to low-income families who, without such assistance, would be likely to be involuntarily displaced (including those who would be likely to be displaced from rental units which are to be converted into a condominium project or a cooperative project). Such assistance may include the acquisition of a condominium or a membership in a cooperative association.

[*See main edition for text of (2)*]

(b) Qualifications and eligibility requirements for assistance payments

To qualify for assistance payments, the homeowner or the cooperative member shall be of lower income and satisfy eligibility requirements prescribed by the Secretary, and—

[*See main edition for text of (1)*]

(2) the cooperative association of which the family is a member shall operate (A) a housing project the construction or substantial rehabilitation of which has been financed with a mortgage insured under section 1715e or section 1715*l*(d)(3) of this title and which has been completed within two years prior to the filing of the application for assistance payments and the dwelling unit has had no previous occupant other than the family: *Provided*, That if any cooperative member who has received assistance payments transfers his membership and occupancy rights to another person who satisfies the eligibility requirements prescribed by the Secretary and undertakes the obligation to pay occupancy charges, the new cooperative member may qualify for assistance payments upon the filing of an application with respect to the dwelling unit involved to be occupied by him: *Provided further*, That assistance payments may be made with respect to a dwelling unit in an existing cooperative project which meets such standards as the Secretary may prescribe, if the family qualifies as a displaced family as defined in section 1715*l*(f) of this title, or a family which includes five or more minor persons, or a family occupying low-rent public housing: *Provided further*, That the amount of the mortgage attributable to the dwelling unit shall involve a principal obligation not in excess of $32,000 ($38,000 in any geographical area where the Seretary authorizes an increase on the basis of a finding that costs levels so require), except that with respect to any family with five or more persons the foregoing limits shall be $38,000 and $44,000, respectively; or (B) a housing project which is financed under a State or local program providing assistance through loans, loan insurance, or tax abatements, and which prior to completion of construction or rehabilitation is approved for receiving the benefits of this section.

(c) Limitation on payments on behalf of mortgagor; occupancy of property; maximum amount of payment

The assistance payments to a mortgagee by the Secretary on behalf of a mortgagor shall be made during such time as the mortgagor shall continue to occupy the property which secures the mortgage: *Provided*, That assistance payments may be made on behalf of a homeowner who assumes a mortgage insured under subsection (i) or (j)(4) of this section with respect to which assistance payments have been made on behalf of the previous owner, if the homeowner is approved by the Secretary as eligible for receiving such assistance: *Provided further*, That the Secretary is authorized to continue making such assistance payments where the mortgage has been assigned to the Secretary. The payment shall be in an amount not exceeding the lesser of—

[*See main edition for text of (1)*]

(2) the difference between the amount of the monthly payment for principal, interest and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage and the monthly payment for principal and interest which the mortgagor would be obligated to pay if the mortgage were to bear interest at the rate of 1 per centum per annum (4 per centum per annum in the case of a mortgage described in subsection (*o*) of this section).

[*See main edition for text of* (*d*) *to* (*h*)]

(i) Insurance of mortgages executed by mortgagors meeting eligibility requirements for assistance payments; issuance of commitment; eligibility requirements for insurance

[*See main edition for text of* (*1*) *and* (*2*)]

(3) A mortgage to be insured under this subsection shall—

(A) involve a single-family dwelling which has been approved by the Secretary prior to the beginning of construction or substantial rehabilitation, or a two-family dwelling one of the units of which is to be occupied by the owner and which is approved by the Secretary prior to the beginning of substantial rehabilitation, or a one-family unit in a condominium project (together with an undivided interest in the common areas and facilities serving the project) which is released from a multi-family project, the construction or substantial rehabilitation of which has been completed within two years prior to the filing of the application for assistance payments with respect to such family unit and the unit has had no previous occupant other than the mortgagor: *Provided*, That the mortgage may involve an existing dwelling or a family unit in an existing condominium project which meets such standards as the Secretary may prescribe: *Provided further*, That the mortgage may involve an existing dwelling or a family unit in an existing condominium project if assistance payments have been made on behalf of the previous owner of the dwelling or family unit with respect to a mortgage insured under subsection (j)(4) of this section: *Provided further*, That the mortgage may involve a dwelling unit in an existing project covered by a mortgage insured under section 1715z-1 of this title or in an existing project receiving the benefits of financial assistance under section 1701s of this title;

(B) where it is to cover a one-family unit in a condominium project, have a principal obligation not exceeding $32,000 ($38,000 in any geographical area where the Secretary authorizes an increase on the basis of a finding that cost levels so require), except that with respect to any family with five or more persons the foregoing limits shall be $38,000 and $44,000, respectively;

(C) involve, in the case of a dwelling unit other than a condominium or cooperative unit, a principal obligation including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed $32,000 ($38,000 in any geographical area where the Seretary[1] authorizes an increase on the basis of a finding that cost levels so require), except that with respect to any family with five or more persons the foregoing limits shall be $38,000 and $44,000, respectively;

(D) involve, in the case of a two-family dwelling, a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed $44,000 ($49,000 in any geographical area where the Secretary authorizes an increase on the basis of a finding that cost levels so require); and

(E) be executed by a mortgagor who shall have paid in cash or its equivalent, on account of the property, at least an amount equal to 3 per centum of the Secretary's estimate of the cost of acquisition.

[*See main edition for text of* (*j*) *to* (*l*)]

(m) Termination date for insurance of mortgages

No mortgage shall be insured under this section after September 30, 1980, except pursuant to a commitment to insure before that date.

(n) Percentage limitation of mortgage insurance on subdivision units; exceptions

No mortgage may be insured under this section on a unit in a subdivision, after October 12, 1977, which, when added to any other mortgages insured under this section in that subdivision after such date, represents more than 40 per centum of the total number of units in the subdivision, except that the preceding limitation shall not apply with regard to any rehabilitated unit, or to any unit or subdivision located or to be located in an established urban neighborhood or area, where a sound proposal is involved and where an aggregation of subsidized units is essential to a community sponsored overall redevelopment plan, as determined by the Secretary.

(o) Mortgage insurance over maximum limits involving dwellings of community sponsored programs of concentrated redevelopment or revitalization

The Secretary may insure a mortgage under this section involving a principal obligation which exceeds, by not more than 20 per centum, the maximum limits specified under subsection (b)(2) or (i)(3) of this section if the mortgage relates to a dwelling in an urban neighborhood where the Secretary determines that a community sponsored program of concentrated redevelopment or revitalization is being undertaken and the Secretary determines that such action is necessary to enable eligible families residing in the area who occupy substandard housing or are being involuntarily displaced to remain in the area in decent, safe, and sanitary housing.

(As amended Oct. 12, 1977, Pub. L. 95-128, title II, § 205, title III, §§ 301(d), 303(f), 91 Stat. 1130, 1131, 1132; Sept. 30, 1978, Pub. L. 95-406, § 1(d), 92 Stat. 879; Oct. 31, 1978, Pub. L. 95-557, title III, § 301(d), 92 Stat. 2096; Sept. 28, 1979, Pub. L. 96-71, § 1(d), 93 Stat. 501; Nov. 8, 1979, Pub.

[1] So in original. Probably should read "Secretary".

L. 96-105, § 1(d), 93 Stat. 794; Dec. 21, 1979, Pub. L. 96-153, title II, § 213, title III, § 301(d), 93 Stat. 1111.)

AMENDMENTS

1979—Subsec. (a)(1). Pub. L. 96-153, § 213(a), added provision that the Secretary give preference to low-income families who are likely to be displaced without assistance and that the assistance may include the acquisition of a condominium or membership in a cooperative association.

Subsec. (c)(2). Pub. L. 96-153, § 213(c)(2), added parenthetical reference to 4 per centum per annum rate in the case of a mortgage described in subsec. (o) of this section.

Subsec. (i)(3)(A). Pub. L. 96-153, § 213(b), substituted "standards as the Secretary may prescribe:" for "standards as the Secretary may prescribe, if the mortgagor qualifies as a displaced family as defined in section 1715*l*(f) of this title, or a family which includes five or more minor persons, or a family occupying low-rent public housing:".

Subsec. (m). Pub. L. 96-153, § 301(d), substituted "September 30, 1980" for "November 30, 1979".

Pub. L. 96-105 substituted "November 30, 1979" for "October 31, 1979".

Pub. L. 96-71 substituted "October 31, 1979" for "September 30, 1979."

Subsec. (o). Pub. L. 96-153, § 213(c)(1), added subsec. (o).

1978—Subsec. (m). Pub. L. 95-557 substituted "September 30, 1979" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

1977—Subsec. (b)(2). Pub. L. 95-128, §§ 205, 303(f)(1), inserted reference to section 1715*l*(d)(3) of this title and substituted in last proviso "$32,000" for "$25,000", "$38,000" for "$29,000" in two instances, and "$44,000" for "$33,000".

Subsec. (i)(3)(B) to (E). Pub. L. 95-128, § 303(f)(2) to (4), substituted in subpar. (B) "$32,000" for "$25,000", "$38,000" for "$29,000" in two instances, and "$44,000" for "$33,000", added subpars. (C) and (D), and redesignated former subpar. (C) as (E).

Subsec. (m). Pub. L. 95-128, § 301(d), substituted "September 30, 1978" for "September 30, 1977".

Subsec. (n). Pub. L. 95-128, § 303(f)(5), added subsec. (n).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1701u, 1701w, 1701x, 1709-1, 1715c, 1715h, 1715q, 1715z-2, 1715z-3, 1720, 1735b, 1735c of this title; title 42 sections 1439, 1457, 1483, 1490a, 2982c.

§ 1715z-1. Rental and cooperative housing for lower income families

[*See main edition for text of* (a) *to* (e)]

(f) Establishment of basic and fair market rental charges; rental for dwelling units; separate utility metering; additional assistance payments for low-income tenants; limitations; amounts; establishment, etc., of initial operating expense level of projects

[*See main edition for text of* (1) *and* (2)]

(3)(A) For each project there shall be established an initial operating expense level, which shall be the sum of the cost of utilities and local property taxes payable by the project owner at the time the Secretary determines the property to be fully occupied, taking into account anticipated and customary vacancy rates. For each fiscal year prior to the fiscal year 1979, the Secretary is authorized to make, and shall contract to make to the extent of the moneys in the reserve fund established under subsection (g) of this section and to the further extent of funds authorized in appropriation Acts, an additional monthly assistance payment to the project owner up to the amount by which the sum of the cost of utilities and local property taxes exceeds the initial operating expense level. Such payment shall be used by the project owner solely to effect, and there shall be, a reduction in the basic rental charges established for the project. Any contract to make additional monthly assistance payments shall be for a one-year period and shall be adjusted periodically to provide, to the extent approved in appropriation Acts, for continuation of the payments and for an appropriate adjustment in the amount of the assistance payments. Additional assistance payments shall be made pursuant to this paragraph unless the Secretary finds that the increase in the cost of utilities or local property taxes is not reasonable or not comparable to cost increases affecting other rental projects in the community.

(B) The Secretary shall utilize amounts credited to the fund described in subsection (g) of this section on or after October 1, 1978, or credited to such fund prior to October 1, 1978, but remaining unobligated on October 31, 1978, for the sole purpose of carrying out the purposes of section 201 of the Housing and Community Development Amendments of 1978. No payments may be made from such fund unless approved in an appropriation Act. No amount may be so approved for any fiscal year beginning after September 30, 1980.

(g) Collection and deposit of excess rental charges for reserve fund for additional assistance payments

The project owner shall, as required by the Secretary, accumulate, safeguard, and periodically pay to the Secretary all rental charges collected in excess of the basic rental charges. Such excess charges shall be credited to a reserve fund to be used by the Secretary to make additional assistance payments as provided in paragraph (3) of subsection (f) of this section.

[*See main edition for text of* (h) *to* (l)]

(m) Definition

For the purpose of this section, the term "income" means income as determined under section 1437*f* of title 42.

(n) Termination date for insurance of mortgages

No mortgage shall be insured under this section after September 30, 1980, except pursuant to a commitment to insure before that date.

[*See main edition for text of* (o) *and* (p)]

(As amended Oct. 12, 1977, Pub. L. 95-128, title II, § 206(a)-(c), title III, § 301(e), 91 Stat. 1130, 1131; Sept. 30, 1978, Pub. L. 95-406, § 1(e), 92 Stat. 879; Oct. 31, 1978, Pub. L. 95-557, title II, § 201(i), title III, § 301(e), 92 Stat. 2087, 2096; Sept. 28, 1979, Pub. L. 96-71, § 1(e), 93 Stat. 501; Nov. 8, 1979, Pub. L. 96-105, § 1(e), 93 Stat. 794; Dec. 21, 1979, Pub. L. 96-153, title II, §§ 203(b), 205(b), title III, § 301(e), 93 Stat. 1107, 1108, 1111.)

REFERENCES IN TEXT

Section 201 of the Housing and Community Development Amendments of 1978, referred to in subsec. (f)(3)(B), is Pub. L. 95-557, title II, § 201, Oct. 31, 1978, 92 Stat. 2084, which enacted section 1715z-1a of this title and amended this section.

AMENDMENTS

1979—Subsec. (f)(3)(B). Pub. L. 96-153, § 205(b), substituted "after October 1, 1978, or credited to such fund prior to October 1, 1978, but remaining unobligated on October 31, 1978," for "after October 1, 1978,", and in provision relating to the restriction on approval of funds, substituted "September 30, 1980" for "September 30, 1979".

Subsec. (m). Pub. L. 96-153, § 203(b), substituted definition of "income" by reference to section 1437f of title 42 for provisions requiring deduction of $300 for each minor member of the family in determining the income and further providing that the earnings of a minor not be included in the income of person or family.

Subsec. (n). Pub. L. 96-153, § 301(e), substituted "September 30, 1980" for "November 30, 1979".

Pub. L. 96-105 substituted "November 30, 1979" for "October 31, 1979".

Pub. L. 96-71 substituted "October 31, 1979" for "September 30, 1979."

1978—Subsec. (f)(3). Pub. L. 95-557, § 201(i)(1), designated existing provisions as par. (A), and in par. (A) as so designated, substituted "For each fiscal year prior to the fiscal year 1979, the" for "The", and added par. (B).

Subsec. (g). Pub. L. 95-557, § 201(i)(2), struck out provisions authorizing, that if during any period the balance in reserve fund was adequate to meet additional assistance payments, such excess charges be credited to the appropriation authorized by subsec. (i), and be available until the end of the next fiscal year for purpose of making assistance payments with respect to rental housing projects, and that for purpose of this subsection and par. (3) of subsec. (f), initial operating expense level for any project assisted under a contract entered into prior to Oct. 12, 1977, be established by the Secretary not later than 180 days after Oct. 12, 1977.

Subsec. (n). Pub. L. 95-557, § 301(e), substituted "September 30, 1979" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

1977—Subsec. (f)(3). Pub. L. 95-128, § 206(a), (b), substituted "The Secretary is authorized to make, and shall contract to make to the extent of the moneys in the reserve fund established under subsection (g) of this section and to the further extent of funds authorized in appropriation Acts, an additional monthly assistance payment to the project owner up to the amount by which the sum of the cost of utilities and local property taxes exceeds the initial operating expense level." for "At any time subsequent to the establishment of an initial operating expense level, the Secretary is authorized to make, and contract to make, additional assistance payments to the project owner in an amount up to the amount by which the sum of the cost of utilities and local property taxes exceeds the initial operating expense level, but not to exceed the amount required to maintain the basic rentals of any units at levels not in excess of 30 per centum or such lower per centum not less than 25 per centum as shall reflect the reduction permitted in clause (ii) of the last sentence of paragraph (1), of the income of tenants occupying such units.", inserted sentence "Such payment shall be used by the project owner solely to effect, and there shall be, a reduction in the basic rental charges established for the project.", and substituted "Any contract to make additional monthly assistance payments shall be for a one-year period and shall be adjusted periodically to provide, to the extent approved in appropriation Acts, for continuation of the payments and for an appropriate adjustment in the amount of the assistance payments." for "Any contract to make additional assistance payments may be amended periodically to provide for appropriate adjustments in the amount of the assistance payments."; and substituted in last sentence "unless the Secretary finds that the increase in the cost of utilities or local property taxes is not reasonable or not" for "only if the Secretary finds that the increase in the cost of utilities or local property taxes, is reasonable and is".

Subsec. (g). Pub. L. 95-128, § 206(c), substituted the date of the enactment of Pub. L. 95-128, which is October 12, 1977, for the date of the enactment of Pub. L. 93-383, which was August 22, 1974.

Subsec. (n). Pub. L. 95-128, § 301(e), substituted "September 30, 1978" for "September 30, 1977".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment of subsec. (m) by Pub. L. 96-153 effective Dec. 21, 1979, and maximum amount of tenant contribution applicable, see section 203(c) of Pub. L. 96-153, set out as an Effective Date of 1979 Amendment note under section 1701s of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 201(i) of Pub. L. 95-557 provided in part that the amendment of subsecs. (f)(3) and (g) of this section is effective Oct. 1, 1978.

EFFECTIVE DATE OF 1977 AMENDMENT; APPLICABILITY

Section 206(d) of Pub. L. 95-128 provided that: "The amendments made by this section [to subsecs. (f)(3) and (g) of this section] shall become effective on October 1, 1977, and shall apply to assistance payments pursuant to section 236(f)(3) of the National Housing Act [subsec. (f)(3) of this section] with respect only to periods commencing on or after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1701s, 1701u, 1701z-11, 1709-1, 1715c, 1715h, 1715r, 1715z, 1715z-1, 1715z-1a, 1715z-2, 1715z-3, 1715z-6, 1715z-9, 1717, 1720, 1735c of this title; title 26 section 1250; title 42 sections 1439, 1457, 1483, 1490c, 2982c; 8231.

§ 1715z-1a. Operating assistance for troubled multifamily housing projects

(a) Purpose

The purposes of this section are to provide assistance to restore or maintain the financial soundness, to assist in the improvement of the management, and to maintain the low- to moderate-income character of certain projects assisted or approved for assistance under the National Housing Act [12 U.S.C. 1701 et seq.] or under the Housing and Urban Development Act of 1965.

(b) Availability of financial assistance

The Secretary of Housing and Urban Development (hereinafter referred to in this section as the "Secretary") may make available, and contract to make available, to such extent and in such amounts as may be approved in appropriation Acts, financial assistance to owners of rental or cooperative housing projects meeting the requirements of this section. Such assistance shall be made on an annual basis and in accordance with the provisions of this section.

(c) Eligibility for financial assistance

a[1] rental or cooperative housing project is eligible for assistance under this section only if such project—

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[1] So in original. Probably should be "A".

(1)(A) is assisted under section 236 [12 U.S.C. 1715z-1] or the proviso of section 221(d)(5) of the National Housing Act [12 U.S.C. 1715*l*(d)(5)], or under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s]; except that, in the case of any such project which is not insured under the National Housing Act [12 U.S.C. 1701 et seq.] such assistance may not be provided before October 1, 1979; or

(B) met the criteria specified in subparagraph (A) of this paragraph before the acquisition of such project by the Secretary and has been sold by the Secretary, subject to a mortgage insured or held by the Secretary and subject to an agreement (in effect during the period of assistance under this section) which provides that the low- and moderate-income character of the project will be maintained; except that, with respect to projects sold after October 1, 1978, assistance shall be available for a period not to exceed three years; and

(2) meets such other requirements consistent with the purposes of this section as the Secretary may prescribe.

(d) Criteria for granting financial assistance

No assistance may be made available under this section unless the Secretary has determined that—

(1) such assistance, when considered with other resources available to the project, is necessary and, in the determination of the Secretary, will restore or maintain the financial soundness of the project and maintain the low- and moderate-income character of the project, and the owner has agreed to maintain the low- and moderate-income character of such project for a period at least equal to the remaining term of the project mortgage;

(2) the assistance which could reasonably be expected to be provided over the useful life of the project will be less costly to the Federal Government than other reasonable alternatives by which the Secretary could maintain the low- and moderate-income character of the project;

(3) the owner of the project, together with the mortgagee in the case of a project not insured under the National Housing Act [12 U.S.C. 1701 et seq.], has provided or has agreed to provide assistance to the project in such manner as the Secretary may determine;

(4) the project is or can reasonably be made structurally sound, as determined on the basis of information obtained as a result of an onsite inspection of the project;

(5) the management of the project is being conducted by persons who meet minimum levels of competency and experience prescribed by the Secretary; and

(6) the project is being operated and managed in accordance with a management-improvement-and-operating plan which is designed to reduce the operating costs of the project, which has been approved by the Secretary, and which includes the following: (A) a detailed maintenance schedule; (B) a schedule for correcting past deficiencies in maintenance, repairs, and replacements; (C) a plan to upgrade the project to meet cost-effective energy efficiency standards prescribed by the Secretary; (D) a plan to improve financial and management control systems; (E) a detailed annual operating budget taking into account such standards for operating costs in the area as may be determined by the Secretary; and (F) such other requirements as the Secretary may determine.

(e) Consultation with local officials

Prior to making assistance available to a project, the Secretary shall consult with the appropriate officials of the unit of local government in which such project is located and seek assurances that—

(1) the community in which the project is located is or will provide essential services to the project in keeping with the community's general level of such services;

(2) the real estate taxes on the project are or will be no greater than would be the case if the property were assessed in a manner consistent with normal property assessment procedures for the community; and

(3) assistance to the project under this section would not be inconsistent with local plans and priorities.

(f) Amount of financial assistance

(1) The Secretary may, with respect to any year, provide assistance under this section, and make commitments to provide such assistance, with respect to any project in any amount which the Secretary determines is consistent with the project's management-improvement-and-operating plan described in subsection (d)(6) of this section and which does not exceed the sum of—

(A) an amount determined by the Secretary to be necessary to correct deficiencies in the project which exist at the beginning of the first year with respect to which assistance is made available for the project under this section, which were caused by the deferral of regularly scheduled maintenance and repairs or the failure to make necessary and timely replacements of equipment and other components of the project, and for which payment has not previously been made;

(B) an amount determined by the Secretary to be necessary to maintain the low- and moderate-income character of the project by reducing deficiencies, which exist at the beginning of the first year with respect to which assistance is made available for the project under this section and for which payment has not previously been made, in the reserve funds established by the project owner for the purpose of replacing capital items; and

(C) an amount not greater than the amount by which the estimated operating expenses (as described in paragraph (2) of this subsection) for the year with respect to which such assistance is made available exceeds the estimated revenues to be received (as described in paragraph (2) of this subsection) by the project during such year.

(2) The estimated revenues for any project under paragraph (1)(C) of this subsection with

respect to any year shall be equal to the sum of—

(A) the estimated amount of rent which is to be expended by the tenants of such project during such year, as determined by the Secretary without regard to section 236(f)(1) of the National Housing Act [12 U.S.C. 1715z-1(f)(1)];

(B) the estimated amount of rental assistance payments to be made on behalf of such tenants during such year, other than assistance made under this section;

(C) the estimated amount of assistance payments to be made on behalf of the owner of such project under section 221(d)(5) or section 236 of the National Housing Act [12 U.S.C. 1715*l*(d)(5) or 1715z-1] during such year; and

(D) other income attributable to the project as determined by the Secretary;

except that—

(E) in computing the estimated amount of rent to be expended by tenants, the Secretary shall provide that (i) at least 25 percent (or such lesser percentage as is provided for under any other Federal housing assistance program in which such tenant is participating) of the income of each such tenant is included, or (ii) in the case of a tenant paying his or her own utilities, a percentage of income which is less than 25 percent and which takes into account the reasonable costs of such utilities; except that no amount shall be provided for any tenant under clause (i) or (ii) which exceeds the fair market rental charge as determined pursuant to section 236(f)(1) of the National Housing Act [12 U.S.C. 1715z-1(f)(1)] for such tenant; and

(F) in computing the estimated amount of rent to be expended by tenants and the estimated amount of rental assistance payments to be made on behalf of such tenants, the Secretary may permit a delinquency-and-vacancy allowance of not more than 6 per centum of the estimated amount of such rent and payments computed without regard to such allowance; except that, with respect to the first three years in which assistance is provided to a project under this section, the Secretary may permit such allowance for such project to exceed such 6 percent by an amount which the Secretary determines is appropriate to carry out the purposes of this section.

For purposes of computing estimated operating expenses of any such project with respect to any year, the Secretary shall include all estimated operating costs which the Secretary determines to be necessary and consistent with the management-improvement-and-operating plan for the project for such year, including, but not limited to, taxes, utilities, maintenance and repairs (except for maintenance and repairs which should have been performed in previous years), management, insurance, debt service, and payments made by the owner for the purpose of establishing or maintaining a reserve fund for replacement costs. The Secretary may not include in such estimated operating expenses any return on the equity investment of the owner in such project.

(3) In order to carry out the purposes of this section, the Secretary may, notwithstanding the provisions of section 236(f)(1) of the National Housing Act [12 U.S.C. 1715z-1(f)(1)], provide that, for purposes of establishing a rental charge under such section, there may be excluded from the computation of the cost of operating a project an amount equivalent to the amount of assistance payments made for the project under this section.

(4) Any assistance payments made pursuant to this section with respect to any project shall be made on an annual basis, payable at such intervals, but at least quarterly, as the Secretary may determine, and may be in any amount (which the Secretary determines to be consistent with the purpose of this section), except that the sum of such assistance payments for any year may not exceed the amount computed pursuant to paragraph (1) of this subsection. The Secretary shall review the operations of the project at the time of such payments to determine that such operations are consistent with the management-improvement-and-operating plan.

(g) Rules and regulations

The Secretary is authorized to issue such rules and regulations as may be necessary to carry out the provisions and purposes of this section, including regulations requiring the establishment of a project reserve or such other safeguards as the Secretary determines to be necessary for the financial soundness of any project for which assistance payments are provided.

(h) Authorization of appropriations

There is authorized to be appropriated, for the purpose of providing financial assistance under this section, an amount (in addition to any amount appropriated for use under this section pursuant to section 236(f)(3)(B) of the National Housing Act [12 U.S.C. 1715z-1(f)(3)(B)],[1] not to exceed $74,000,000 for the fiscal year 1979, and not to exceed $82,000,000 for the fiscal year 1980. Any amounts appropriated under this section shall remain available until expended.

(Pub. L. 95-557, title II, § 201(a)-(h), Oct. 31, 1978, 92 Stat. 2084; Pub. L. 96-153, title II, §§ 205(a), 211(c), Dec. 21, 1979, 93 Stat. 1108, 1110.)

REFERENCES IN TEXT

The National Housing Act, as amended, referred to in subsecs. (a), (c)(1)(A), (d)(3), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Housing and Urban Development Act of 1965, as amended, referred to in subsec. (a), is Pub. L. 89-117, Aug. 10, 1965, 79 Stat. 451, as amended. For complete classification of this Act to the Code, see Short Title of 1965 Amendment note set out under section 1701 of this title and Tables.

CODIFICATION

This section was enacted as part of the Housing and Community Development Amendments of 1978, and

[1] So in original. Probably should have closing parenthesis instead of a comma.

not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1979—Subsec. (d)(1). Pub. L. 96-153, § 211(c), added requirement that the owner agree to maintain the low- and moderate-income character of such project for a period at least equal to the remaining term of the project mortgage.

Subsec. (h). Pub. L. 96-153, § 205(a), added authorization of appropriations for fiscal year 1980.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1715z-1, 1715z-1b of this title.

§ 1715z-1b. Tenant participation in multifamily housing projects

(a) Purpose; definitions

The purpose of this section is to recognize the importance and benefits of cooperation and participation of tenants in creating a suitable living environment in multifamily housing projects and in contributing to the successful operation of such projects, including their good physical condition, proper maintenance, security, energy efficiency, and control of operating costs. For the purpose of this section, the term "multifamily housing project" means a project which is eligible for assistance as described in section 1715z-1a(c) of this title.

(b) Rights of tenants

The Secretary shall assure that—

(1) where the Secretary's written approval is required with respect to an owner's action and the Secretary deems it appropriate, tenants have adequate notice of, reasonable access to relevant information about, and an opportunity to comment on such actions (and in the case of a project owned by the Secretary, any proposed disposition of the project) and that such comments are taken into consideration by the Secretary;

(2) project owners not interfere with the efforts of tenants to obtain rent subsidies or other public assistance;

(3) leases approved by the Secretary provide that tenants may not be evicted without good cause or without adequate notice of the reasons therefor and do not contain unreasonable terms and conditions; and

(4) project owners do not impede the reasonable efforts of resident tenant organizations to represent their members or the reasonable efforts of tenants to organize.

(c) Regulations

The Secretary shall promulgate regulations to carry out the provisions of this section not later than 90 days after October 31, 1978.

(Pub. L. 95-557, title II, § 202, Oct. 31, 1978, 92 Stat. 2088.)

CODIFICATION

This section was enacted as part of the Housing and Community Development Amendments of 1978, and not as part of the National Housing Act which comprises this chapter.

§ 1715z-3. Special Risk Insurance Fund

[See main edition for text of (a) and (b)]

(c) Mortgage insurance for military impacted areas; criteria; obligation of Special Risk Insurance Fund; premiums and other charges: establishment

(1) Notwithstanding the provisions of this chapter or any other Act, and without regard to limitations upon eligibility contained in any section of this subchapter, the Secretary is authorized, upon application by the mortgagee, to insure under any section of this subchapter a mortgage executed in connection with the construction, repair, rehabilitation, or purchase of property located near any installation of the Armed Forces of the United States in federally impacted areas in which the conditions are such that one or more of the eligibility requirements applicable to the section under which insurance is sought could not be met, if (A) the Secretary finds that the benefits to be derived from such use outweigh the risk of probable cost to the Government, and (B) the Secretary of Defense certifies that there is no intention insofar as can reasonably be foreseen to curtail substantially the personnel assigned or to be assigned to such installation. The insurance of a mortgage pursuant to this subsection shall be the obligation of the Special Risk Insurance Fund.

(2) The Secretary is authorized (A) to establish such premiums and other charges as may be necessary to assure that the mortgage insurance program pursuant to this subsection is made available on a basis which, in the Secretary's judgment, is designed to be actuarially sound and likely to maintain the fiscal integrity of such program, and (B) to prescribe such terms and conditions relating to insurance pursuant to this subsection as may be found by the Secretary to be necessary and appropriate, and which are to the maximum extent possible, consistent with provisions otherwise applicable to mortgage insurance and payment of insurance benefits.

(As amended Oct. 12, 1977, Pub. L. 95-128, title III, § 309, 91 Stat. 1135.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1), was in the original "this [Act]", meaning act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, known as the National Housing Act. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-128 substituted provisions of pars. (1) and (2) respecting mortgage insurance for military impacted areas, criteria therefore, and establishment of premiums and other charges for prior subsec. (c), which had authorized use of the Special Risk Insurance Fund to carry out mortgage insurance obligations of sections 1709 and 1713 of this title to provide housing for military personnel, Federal civilian employees, and Federal contractor employees assigned to duty or employed at or in connection with any installation of the Armed Forces in federally impacted areas where in the judgment of the Secretary (1) the residual housing requirements for persons not associated with such installations were insufficient to sustain the housing market in the event of substantial curtailment of employment of personnel assigned to such installations, and (2) the benefits to be derived from such use outweighed the risk of possible cost to the Government.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1709, 1715v of this title.

§ 1715z-5. Purchase of fee simple title from lessors

[*See main edition for text of* (a) *and* (b)]

(c) Eligibility for insurance

To be eligible for insurance under this section, a loan shall—

[*See main edition for text of* (1)]

(2) not exceed the cost of purchasing the fee simple title, or $10,000 ($30,000, if the property is located in Hawaii) per family unit, whichever is the lesser;

[*See main edition for text of* (3) *to* (6); (d)]

(As amended Oct. 31, 1978, Pub. L. 95-557, title III, § 314, 92 Stat. 2099.)

AMENDMENTS

1978—Subsec. (c)(2). Pub. L. 95-557 added "($30,000, if the property is located in Hawaii)" following "$10,000".

§ 1715z-6. Supplemental loans for multifamily projects

[*See main edition for text of* (a)]

(b) Eligibility for insurance

To be eligible for insurance under this section, a supplemental loan shall—

[*See main edition for text of* (1)]

(2) have a maturity satisfactory to the Secretary;

[*See main edition for text of* (3) *to* (6); (c)]

(d) Authorization to insure loans for improvements or additions; terms and conditions; limitation on amount

Notwithstanding the foregoing, the Secretary may insure a loan for improvements or additions to a multifamily housing project, or a group practice or medical practice facility or hospital or other health facility approved by the Secretary, which is not covered by a mortgage insured under this chapter, if he finds that such a loan would assist in preserving, expanding, or improving housing opportunities, or in providing protection against fire or other hazards. Such loans shall have a maturity satisfactory to the Secretary and shall meet such other conditions as the Secretary may prescribe. In no event shall such a loan be insured if it is for an amount in excess of the maximum amount which could be approved if the outstanding indebtedness, if any, covering the property were a mortgage insured under this chapter. At any sale under foreclosure of a mortgage on a project or facility which is not insured under this chapter but which is senior to a loan assigned to the Secretary pursuant to subsection (c) of this section, the Secretary is authorized to bid, in addition to amounts authorized under section 1713(k) of this title, any sum up to but not in excess of the total unpaid indebtedness secured by such senior mortgage, plus taxes, insurance, foreclosure costs, fees, and other expenses. In the event that, pursuant to subsection (c) of this section, the Secretary acquires title to, or is assigned, a loan covering a project or facility which is subject to a mortgage which is not insured under this chapter, the Secretary is authorized to make payments from the General Insurance Fund on the debt secured by such mortgage, and to take such other steps as the Secretary may deem appropriate to preserve or protect the Secretary's interest in the project or facility.

(e) Loan insurance for energy conserving improvements and solar energy systems

(1) Notwithstanding any other provision of this section, the Secretary may insure a loan for purchasing and installing energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 1703(a) of this title), for purchasing and installing a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title), and for purchasing or installing (or both) individual utility meters in a multifamily housing project without regard to whether the project is covered by a mortgage under this chapter.

(2) Notwithstanding the provisions of subsection (b) of this section, a loan insured under this subsection shall—

(A) not exceed an amount which the Secretary determines is necessary for the purchase and installation of individual utility meters plus an amount which the Secretary deems appropriate taking into account amounts which will be saved in operation costs over the period of repayment of the loan by reducing the energy requirements of the project as a result of the installation of energy conserving improvements or a solar energy system therein;

(B) be insured for 90 percent of any loss incurred by the person holding the note for the loan; except that, for cooperative multifamily projects receiving assistance under section 1715z-1 of this title or financed with a below market interest rate mortgage insured under section 1715*l*(d)(3) of this title, 100 percent of any such loss may be insured;

(C) bear an interest rate not to exceed an amount which the Secretary determines, after consulting with the Secretary of Energy, to be necessary to meet market demands;

(D) have a maturity satisfactory to the Secretary;

(E) be insured pursuant to a premium rate established on a sound actuarial basis to the extent practicable;

(F) be secured in such manner as the Secretary may require;

(G) be an acceptable risk in that energy conservation or solar energy benefits to be derived outweigh the risks of possible loss to the Federal Government; and

(H) contain such other terms, conditions, and restrictions as the Secretary may prescribe.

(3) The provisions of subsection (c) of this section shall apply to loans insured under this subsection.

(4) The Secretary shall provide that any person obligated on the note for any loan insured under this section be regulated or restricted, until the termination of all obligations of the Secretary under the insurance, by the Secretary as to rents or sales, charges, capital structure, rate of return, and methods of operations of the multifamily project to such an extent and in such manner as to provide reasonable rentals to tenants and a reasonable return on the investment.

(As amended Oct. 31, 1978, Pub. L. 95-557, title III, § 311(b), 92 Stat. 2098; Nov. 9, 1978, Pub. L. 95-619, title II, § 247, 92 Stat. 3234; Dec. 21, 1979, Pub. L. 96-153, title III, § 319, 93 Stat. 1119.)

REFERENCES IN TEXT

"This chapter", referred to in subsecs. (d) and (e)(1), was in the original "this Act", meaning act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, known as the National Housing Act. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

1979—Subsec. (b)(2). Pub. L. 96-153 struck out "but not to exceed the remaining term of the mortgage" following "the Secretary".

1978—Subsec. (d). Pub. L. 95-557 added provision relating to the amounts the Secretary is authorized to bid at any sale under foreclosure of a mortgage on a project or facility which is not insured under this chapter but which is senior to a loan assigned to the Secretary pursuant to subsection (c), and such other steps the Secretary is authorized to take to preserve or protect his interest in the project or facility.

Subsec. (e). Pub. L. 95-619 added subsec. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1723g of this title.

§ 1715z-7. Mortgage insurance for hospitals

[*See main edition for text of* (a) *and* (b)]

(c) Authorization to insure; prohibition of premiums on guarantees of principal and interest under title VII of the Public Health Service Act

The Secretary is authorized to insure any mortgage (including advances on such mortgage during construction) in accordance with the provisions of this section upon such terms and conditions as he may prescribe and to make commitments for insurance of such mortgage prior to the date of its execution or disbursement thereon. No mortgage insurance premium shall be charged with respect to the amount of principal and interest guaranteed by the Department of Health, Education, and Welfare under title VII of the Public Health Service Act [42 U.S.C. 292 et seq.].

(d) Insurance of mortgages covering new or rehabilitated hospitals, including equipment; terms and conditions

In order to carry out the purpose of this section, the Secretary is authorized to insure any mortgage which covers a new or rehabilitated hospital, including equipment to be used in its operation, subject to the following conditions:

[*See main edition for text of* (1) *to* (3)]

(4) The Secretary shall not insure any mortgage under this section unless he has received, from the State agency designated in accordance with section 604(a)(1) or section 1521 of the Public Health Service Act [42 U.S.C. 291d(a)(1) or 300m] for the State in which is located the hospital covered by the mortgage, a certification that (A) there is a need for such hospital, and (B) there are in force in such State or the political subdivision of the State in which the proposed hospital would be located reasonable minimum standards of licensure and methods of operation for hospitals. No such mortgage shall be insured under this section unless the Secretary has received such assurance as he may deem satisfactory from the State agency that such standards will be applied and enforced with respect to any hospital located in the State for which mortgage insurance is provided under this section.

(5) The Secretary shall not insure any mortgage or approve any modification of an existing mortgage insured pursuant to this section or section 1715n(f) of this title if such insurance or modification is to be made in connection with a guarantee, as authorized pursuant to section 1721 of this title, of a trust certificate or other security which is exempt from Federal taxation or which is to be used to collateralize obligations which are so exempt, except that the Secretary shall not refuse to insure such a mortgage or approve such a modification solely on the basis that such insurance or modification is to be made in connection with a guarantee, as authorized pursuant to section 1721 of this title, of a trust certificate or other security which is exempt from Federal taxation or which is to be used to collateralize obligations which are so exempt if—

(A) a written application for such insurance or modification submitted at the express direction of the hospital has been submitted to the appropriate office of the Department of Health, Education, and Welfare prior to March 29, 1979; or

(B) in the case of a nonprofit mortgagor which is seeking refinancing or modification of an existing mortgage insured pursuant to this section or section 1715n(f) of this title, the mortgagor (i) had engaged an investment banker for the purpose of obtaining such refinancing or modification, or had undertaken or arranged for the undertaking of a market or feasibility study with respect to the advisability of obtaining such refinancing or modification, and had made written notification of its interest in such refinancing or modification to the Department of Health, Education, and Welfare or the Department of Housing and Urban Development prior to June 7, 1979; and (ii) receives from the programs established under titles XVIII [42 U.S.C. 1395 et seq.] and XIX [42 U.S.C. 1396 et seq.] of the Social Security Act a percentage of its total revenue which is greater than 125 per centum of the national average for hospitals which derive revenue from such titles.

[*See main edition for text of* (e) *to* (h)]

(As amended Oct. 12, 1977, Pub. L. 95-128, title III, § 308, 91 Stat. 1135; Dec. 21, 1979, Pub. L. 96-153, title III, § 315, 93 Stat. 1117.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (c), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title VII of the Public Health Service Act was added by act July 30, 1956, ch. 779, § 2, 70 Stat. 717, and is classified generally to subchapter V (§ 292 et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Social Security Act, referred to in subsec. (d)(5), is Act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (1395 et seq.) and XIX (1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1979—Subsec. (d)(5). Pub. L. 96-153 added subsec. (d)(5).

1977—Subsec. (c). Pub. L. 95-128, § 308(b), prohibited charging any mortgage insurance premium with respect to the amount of principal and interest guaranteed by the Department of Health, Education, and Welfare under title VII of the Public Health Service Act.

Subsec. (d)(4). Pub. L. 95-128, § 308(a), inserted reference to section 1521.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1709-1, 1715c, 1715n of this title.

§ 1715z-9. Co-insurance of eligible mortgage, advance, or loan

[*See main edition for text of* (a) *to* (c)]

(d) Termination date; aggregate principal amount of mortgages and loans authorized to be insured; applicability of overall percentage limitations

No mortgage, advance, or loan shall be insured pursuant to this section after September 30, 1980, except pursuant to a commitment to insure made before that date. The aggregate principal amount of mortgages and loans insured pursuant to this section in any fiscal year beginning on or after July 1, 1974, and ending prior to October 1, 1980, shall not exceed 20 per centum of the aggregate principal amount of all mortgages and loans insured under this subchapter during such fiscal year. The overall percentage limitation specified in the preceding sentence shall also apply separately within each of the following categories—

[*See main edition for text of* (1) *and* (2); (e) *to* (g)]

(As amended June 30, 1977, Pub. L. 95-60, § 1(d), 91 Stat. 257; July 31, 1977, Pub. L. 95-80, § 1(d), 91 Stat. 339; Oct. 12, 1977, Pub. L. 95-128, title III, § 301(f), 91 Stat. 1131; Sept. 30, 1978, Pub. L. 95-406, § 1(f), 92 Stat. 879; Oct. 31, 1978, Pub. L. 95-557, title III, § 301(f), 92 Stat. 2096; Sept. 28, 1979, Pub. L. 96-71, § 1(f), 93 Stat. 501; Nov. 8, 1979, Pub. L. 96-105, § 1(f), 93 Stat. 794; Dec. 21, 1979, Pub. L. 96-153, title III, § 301(f), 93 Stat. 1111.)

AMENDMENTS

1979—Subsec. (d). Pub. L. 96-153 substituted "September 30, 1980" for "November 30, 1979" and "October 1, 1980" for "December 1, 1979".

Pub. L. 96-105 substituted "November 30, 1979" and "December 1, 1979" for "October 31, 1979" and "November 1, 1979", respectively.

Pub. L. 96-71 substituted "October 31, 1979" and "November 1, 1979" for "September 30, 1979" and "October 1, 1979", respectively.

1978—Subsec. (d). Pub. L. 95-557 substituted "September 30, 1979" for "October 31, 1978" and "October 1, 1979" for "November 1, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978" and "November 1, 1978" for "October 1, 1978".

1977—Subsec. (d). Pub. L. 95-128 substituted "September 30, 1978" for "September 30, 1977" and "October 1, 1978" for "October 1, 1977".

Pub. L. 95-80 substituted "September 30, 1977" for "July 31, 1977".

Pub. L. 95-60 substituted "July 31, 1977" for "June 30, 1977".

§ 1715z-10. Graduated payment mortgages

(a) Criteria; principal obligation limitation; termination date

The Secretary may insure under any provision of this subchapter mortgages and loans with provisions of varying rates of amortization corresponding to anticipated variations in family income to the extent he determines such mortgages or loans (1) have promise for expanding housing opportunities or meet special needs, (2) can be developed to include any safeguards for mortgagors or purchasers that may be necessary to offset special risks of such mortgages, and (3) have a potential for acceptance in the private market. Notwithstanding any other provision of this subchapter, except as provided in subsection (b) of this section, the principal obligation (including all interest to be deferred and added to principal) of a mortgage insured pursuant to this subsection may not exceed 97 per centum of the appraised value of the property covered by the mortgage as of the date the mortgage is accepted for insurance, or if the mortgagor is a veteran and the mortgage is to be insured in accordance with the provisions of section 1709 of this title, such higher percentage of appraised value as is provided for purposes of determining the maximum mortgage amount eligible for insurance under section 1709(b)(2) of this title in the case of veterans. A mortgage or loan may not be insured pursuant to this subsection after September 30, 1980, except pursuant to a commitment entered into prior to such date.

(b) Inapplicability of principal obligation limitations

Notwithstanding the provisions of subsection (a) of this section, the Secretary may insure under any provision of this subchapter a mortgage or loan which meets the requirements of the first sentence of subsection (a) of this section and which has provisions for varying rates of amortization if the Secretary determines—

(1) the mortgagor could not reasonably afford to purchase the dwelling unit by

means of a mortgage insured under subsection (a) of this section or any other mortgage insurance program under this subchapter;

(2) the principal obligation of the mortgage or loan initially does not exceed the percentage of the initial appraised value of the property specified in section 1709(b) of this title as of the date the mortgage or loan is accepted for insurance;

(3) the principal obligation of the mortgage or loan thereafter (including all interest to be deferred and added to principal) will not at any time be scheduled to exceed 97 per centum, or, if the mortgagor is a veteran, such higher percentage as is provided under section 1709(b)(2) of this title for veterans, of the projected value of the property; and

(4) the principal obligation of the mortgage thereafter will not exceed 113 per centum of the intitial appraised value of the property.

Mortgage insurance under this subsection shall be limited to mortgages executed by mortgagors who, as determined by the Secretary, have not owned dwelling units within the preceding three years. For the purpose of this subsection, the projected value of the property shall be calculated by the Secretary by increasing the initial appraised value of the property at a rate not in excess of 2½ per centum per annum. The number of mortgages which are insured in accordance with this subsection in any fiscal year may not exceed (A) that number of mortgages the aggregate initial principal obligation of which equals 10 per centum of the aggregate amount of the initial principal obligation of all mortgages secured by properties improved by one- to four-family residences which are insured under this subchapter during the preceding fiscal year, or (B) 50,000 mortgages, whichever is greater.

(c) Inapplicability of State constitution, etc., provision limiting interest or requiring minimum amortization of principal

Any mortgage or loan insured pursuant to this section which contains or sets forth any graduated mortgage provisions (including but not limited to provisions for adding deferred interest to principal) which are authorized under this section and applicable regulations, or which have been insured on the basis of their being so authorized, shall not be subject to any State constitution, statute, court decree, common law, or rule or public policy (1) limiting the amount of interest which may be charged, taken, received, or reserved, or the manner of calculating such interest (including but not limited to prohibitions against the charging of interest on interest), if such constitution, statute, court decree, common law, or rule would not apply to the mortgage or loan in the absence of such graduated payment mortgage provisions, or (2) requiring a minimum amortization of principal under the mortgage or loan.

(As amended Oct. 12, 1977, Pub. L. 95-128, title III, §§ 301(g), 310, 91 Stat. 1131, 1136; Sept. 30, 1978, Pub. L. 95-406, § 1(g), 92 Stat. 879; Oct. 31, 1978, Pub. L. 95-557, title III, § 301(g), 92 Stat. 2096; Nov. 10, 1978, Pub. L. 95-630, title XV, § 1503, 92 Stat. 3713; Sept. 28, 1979, Pub. L. 96-71, § 1(g), 93 Stat. 501; Nov. 8, 1979, Pub. L. 96-105, § 1(g), 93 Stat. 794; Dec. 21, 1979, Pub. L. 96-153, title III, §§ 301(g), 311(b), 93 Stat. 1112, 1115.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-153, §§ 301(g), 311(a)(1)-(4), designated existing provisions as subsec. (a), and in subsec. (a), as so designated, struck out provisions that mortgages or loans insured pursuant to this section which contained or set forth graduated mortgage provisions shall not be subject to local usury laws and laws requiring a minimum amortization of principal or otherwise relating to amortization of principal under the mortgage or loan, and substituted "September 30, 1980" for "November 30, 1979."

Pub. L. 96-105 substituted "November 30, 1979" for "October 31, 1979".

Pub. L. 96-71 substituted "October 31, 1979" for "September 30, 1979".

Subsecs. (b), (c). Pub. L. 96-153, § 311(5), added subsecs. (b) and (c).

1978—Pub. L. 95-630 inserted "(1)" preceding "limiting the amount of interest" and ", or (2) requiring a minimum amortization of principle or otherwise relating to the amortization of principle under the mortgage or loan" following "payment mortgage provisions".

Pub. L. 95-557 substituted "September 30, 1979" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

1977—Pub. L. 95-128 extended termination date to Sept. 30, 1978, from Sept. 30, 1977; and deleted phrase "on an experimental basis" following "may insure", substituted provision respecting limitation of principal obligation for prior provision respecting limitation of outstanding aggregate principal amount of mortgages authorized, and made any State law interest limitation inapplicable to graduated mortgage provisions.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective Nov. 10, 1978, see section 1505 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 27 of this title.

SHORT TITLE OF 1979 AMENDMENT

For Short Title of section 311 of Pub. L. 96-153, which amended this section, as the "Homeownership Opportunity Act of 1979", see section 311(a) of Pub. L. 96-153, set out as a Short Title of 1979 Amendment note under section 1701 of this title.

§ 1715z-11. Sale to cooperatives of multifamily housing projects acquired by Secretary; acceptance of purchase money mortgage for sale or insurance of mortgage; principal amount of mortgage; expenditures for repairs, etc., prior to sale

In any case which the Secretary sells a multifamily housing project acquired as the result of a default on a mortgage which was insured under this chapter to a cooperative which will operate it on a nonprofit basis and restrict permanent occupancy of its dwellings to members, or to a nonprofit corporation which operates as a consumer cooperative as defined by the Secretary, the Secretary may accept a purchase money mortgage, or upon application of the mortgagee, insure a mortgage under this section upon such terms and conditions as the Secretary determines are reasonable and appropriate, in a principal amount equal to the value of the property at the time of purchase, which

value shall be based upon a mortgage amount on which the debt service can be met from the income of property when operated on a nonprofit basis after payment of all operating expenses, taxes, and required reserves; except that the Secretary may add to the mortgage amount an amount not greater than the amount of prepaid expenses and costs involved in achieving cooperative ownership, or make such other provisions for payment of such expenses and costs as the Secretary deems reasonable and appropriate. Prior to such disposition of a project, funds may be expended by the Secretary for necessary repairs and improvements.

(As amended Oct. 31, 1978, Pub. L. 95-557, title III, § 322, 92 Stat. 2102.)

REFERENCES IN TEXT

"This chapter", referred to in text, was in the original "this Act", meaning act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, known as the National Housing Act. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

1978—Pub. L. 95-557 added "or to a nonprofit corporation which operates as a consumer cooperative as defined by the Secretary" following "dwellings to members" and "or upon application of the mortgagee, insure a mortgage under this section upon such terms and conditions as the Secretary determines are reasonable and appropriate" following "purchase money mortgage" and substituted "the value of the property at the time of purchase, which value shall be based upon a mortgage amount on which the debt service can be met from the income of property when operated on a nonprofit basis after payment of all operating expenses, taxes, and required reserves; except that the Secretary may add to the mortgage amount an amount not greater than the amount of prepaid expenses and costs involved in achieving cooperative ownership, or make such other provision for payment of such expenses and costs as the Secretary deems reasonable and appropriate" for "the sum of (1) the appraised value of the property at the time of purchase, which value shall be based upon a mortgage amount on which the debt service can be met from the income of the property when operated on a nonprofit basis and after payment of all operating expenses, taxes and required reserves, and (2) the amount of prepaid expenses and costs involved in achieving cooperative ownership".

SUBCHAPTER III—NATIONAL MORTGAGE ASSOCIATIONS

§ 1716. Declaration of purposes of subchapter

SHORT TITLE

Section 312 of title III of act June 27, 1934, as added Aug. 2, 1954, ch. 649, § 201, 68 Stat. 622, provided: "This title III [this subchapter] may be referred to as the 'Federal National Mortgage Association Charter Act'."

§ 1717. Federal National Mortgage Association and Government National Mortgage Association

[*See main edition for text of* (a)]

(b) Purchase and sale of insured and conventional mortgages; transactions in loans and advances of credit

(1) For the purposes set forth in section 1716 of this title and subject to the limitations and restrictions of this subchapter, each of the bodies corporate named in subsection (a)(2) of this section is authorized pursuant to commitments or otherwise, to purchase, service, sell, or otherwise deal in any mortgages which are insured under this chapter or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or which are insured or guaranteed under the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38; and to purchase, service, sell, or otherwise deal in any loans made or guaranteed under part B of title VI of the Public Health Service Act [42 U.S.C. 291j-1 et seq.]; and the corporation is authorized to lend on the security of any such mortgages and to purchase, sell, or otherwise deal in any securities guaranteed by the Association under section 1721(g) of this title: *Provided,* That (1) the Association may not purchase any mortgage at a price exceeding 100 per centum of the unpaid principal amount thereof at the time of purchase, with adjustments for interest and any comparable items; (2) the Association may not purchase any mortgage, except a mortgage insured under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], if it is offered by, or covers property held by, a State, territorial, or municipal instrumentality; and (3) the Association may not purchase any mortgage under section 1720 of this title, except a mortgage insured under section 1715k of this title or subchapter VIII of this chapter or section 1709(k) of this title, or under subchapter IX-A of this chapter with respect to a new community approved under section 1749cc-1 of this title, or insured under section 1715e of this title and covering property located in an urban renewal area, or a mortgage covering property located in Alaska, Guam, or Hawaii, if the original principal obligation thereof exceeds or exceeded $55,000 in the case of property upon which is located a dwelling designed principally for a one-family residence; or $60,000 in the case of a two- or three-family residence; or $68,750 in the case of a four-family residence; or, in the case of a property containing more than four dwelling units, $38,000 per dwelling unit (or such higher amount not in excess of $45,000 per dwelling unit as the Secretary may by regulation specify in any geographical area where the Secretary finds that cost levels so require) for that part of the property attributable to dwelling use. Notwithstanding the provisions of clause (3) of the preceding sentence, the Association may purchase a mortgage under section 1720 of this title with an original principal obligation which exceeds the otherwise applicable maximum amount per dwelling unit if (1) the mortgage is insured under section 1713(c)(3), 1715e(b)(2), 1715k(d)(3)(B)(iii), 1715*l*(d)(3)(ii), 1715*l*(d)(4)(ii), 1715v(c)(2), 1715y(e)(3), or 1715z-1 of this title, and (2) at least 20 per centum of the units covered by such mortgage are assisted under contracts authorized by section 1437f of title 42. For the purposes of this subchapter, the terms "mortgages" and "home mortgages" shall be inclusive of any mortgages or other loans insured under any of the provisions of this chapter or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.].

(2) For the purposes set forth in section 1716(a) of this title, and with the approval of

the Secretary of Housing and Urban Development, the corporation is authorized, pursuant to commitments or otherwise, to purchase, service, sell, lend on the security of, or otherwise deal in mortgages which are not insured or guaranteed as provided in paragraph (1) (such mortgages referred to hereinafter as "conventional mortgages"). No such purchase of a conventional mortgage shall be made if the outstanding principal balance of the mortgage at the time of purchase exceeds 80 per centum of the value of the property securing the mortgage, unless (A) the seller retains a participation of not less than 10 per centum in the mortgage; (B) for such period and under such circumstances as the corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the corporation in the event that the mortgage is in default; or (C) that portion of the unpaid principal balance of the mortgage which is in excess of such 80 per centum is guaranteed or insured by a qualified insurer as determined by the corporation. The corporation shall not issue a commitment to purchase a conventional mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (A) of such sentence. The corporation may purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller is currently engaged in mortgage lending or investing activities and if as a result thereof, the cumulative aggregate of the principal balances of all conventional mortgages purchased by the corporation which were originated more than one year prior to the date of purchase does not exceed 20 per centum of the cumulative aggregate of the principal balances of all conventional mortgages purchased by the corporation. The corporation shall establish limitations governing the maximum principal obligation of conventional mortgages purchased by it, but such limitations shall not exceed by more than 25 per centum the limitations contained in the first proviso of the first sentence of section 1464(c) of this title.

(3) The corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in loans or advances of credit made for energy conserving improvements and solar energy systems described in the last paragraph of section 1703(a) of this title, whether or not insured under such section. To be eligible for purchase, any such loan not so insured may be secured as required by the corporation.

[*See main edition for text of* (c)]

(As amended Oct. 12, 1977, Pub. L. 95-128, title IV, § 408(a), 91 Stat. 1138; Oct. 31, 1978, Pub. L. 95-557, title I, § 101(c)(3), title III, § 318(a), 92 Stat. 2083, 2100; Nov. 9, 1978, Pub. L. 95-619, title II, § 246, 92 Stat. 3233; Dec. 21, 1979, Pub. L. 96-153, title III, § 317, 93 Stat. 1119.)

AMENDMENTS

1979—Subsec. (b)(1). Pub. L. 96-153 substituted "(1) if the mortgage is insured under section 1713(c)(3), 1715e(b)(2), 1715k(d)(3)(B)(iii), 1715l(d)(3)(ii), 1715l(d)(4)(ii), 1715v(c)(2), 1715y(e)(3), or 1715z-1 of this title, and (2) at least 20 per centum of the units covered by such mortgage are assisted under contracts authorized by section 1437f of title 42" for "if the mortgage (1) is insured under section 1715z-1 of this title or is a below-market interest rate mortgage insured under section 1715l(d)(3) of this title, and (2) covers property which has the benefit of local tax abatement in an amount determined by the Secretary of Housing and Urban Development to be sufficient to make possible rentals not in excess of those that could be approved by the Secretary if the mortgage amount did not exceed the otherwise applicable maximum amount per dwelling unit and if local tax abatement were not provided".

1978—Subsec. (b). Pub. L. 95-619 added par. (3).

Subsec. (b)(1). Pub. L. 95-557 substituted "or subchapter VIII of this chapter or section 1709(k) of this title" for "or subchapter VIII of this chapter" and "if the original principal obligation thereof exceeds or exceeded $55,000 in the case of property upon which is located a dwelling designed principally for a one-family residence; or $60,000 in the case of a two- or three-family residence; or $68,750 in the case of a four-family residence; or, in the case of a property containing more than four dwelling units, $38,000 per dwelling unit (or such higher amount not in excess of $45,000 per dwelling unit as the Secretary may by regulation specify in any geographical area where the Secretary finds that cost levels so require) for that part of the property attributable to dwelling use" for "if the original principal obligation thereof exceeds or exceeded $33,000 (or such higher amount not in excess of $38,000 as the Secretary may by regulation specify in any geographical area where he finds that cost levels so require), for each family residence or dwelling unit covered by the mortgage (plus an additional $2,500 for each such family residence or dwelling unit which has four or more bedrooms)".

1977—Subsec. (b)(2). Pub. L. 95-128 inserted in last sentence "by more than 25 per centum" following "exceed".

TRANSFER OF FUNCTIONS

All functions of the Commissioner of Education, Department of Health, Education, and Welfare, were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(1) by adding reference to section 1709(k) of this title by Pub. L. 95-557 effective Oct. 1, 1978, see section 104 of Pub. L. 95-557, set out as an Effective Date of 1978 Amendment note under section 1709 of this title.

§ 1720. Special assistance functions of Government National Mortgage Association

[*See main edition for text of* (a) *and* (b)]

(c) Limitation on purchases and commitments

The total amount of purchases and commitments authorized by the President pursuant to subsection (a) of this section shall not exceed $1,700,000,000 outstanding at any one time, which limit shall be increased by $100,000,000 on August 10, 1965, by $550,000,000 on July 1, 1967, by $525,000,000 on July 1, 1968, by $2,000,000,000 on July 1, 1969, and subject to approval in an appropriation Act, by $500,000,000 on October 1, 1978.

[*See main edition for text of* (d) *to* (j)]

(As amended Oct. 31, 1978, Pub. L. 95-557, title III, § 318(b), 92 Stat. 2101.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-557 substituted "by $2,000,000,000 on July 1, 1969, and subject to approval in an appropriation Act, by $500,000,000 on October 1, 1978" for "and by $2,000,000,000 on July 1, 1969".

§ 1721. Management and liquidation functions of Government National Mortgage Association

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 1455, 1464, 1715z-7, 1716b, 1717, 1722, 1723e of this title.

§ 1723a. General powers of Government National Mortgage Association and Federal National Mortgage Association

[*See main edition for text of* (a) *to* (c)]

(d) Appointment and compensation of personnel; use of services of other agencies

[*See main edition for text of* (1)]

(2) The board of directors of the corporation shall have the power to select and appoint or employ such officers, attorneys, employees, and agents, to vest them with such powers and duties, and to fix and to cause the corporation to pay such compensation to them for their services, as it may determine; and any such action shall be without regard to the Federal civil service and classification laws. Appointments, promotions, and separations so made shall be based on merit and efficiency, and no political tests or qualifications shall be permitted or given consideration. Each officer and employee of the corporation who is employed by the corporation prior to January 31, 1972, and who on the day previous to the beginning of such employment will have been subject to the civil service retirement law (sub ch. III of ch. 83 of title 5) shall, so long as his employment by the corporation continues without a break in continuity of service, continue to be subject to such law; and for the purpose of such law his employment by the corporation without a break in continuity of service shall be deemed to be employment by the Government of the United States. The corporation shall contribute to the Civil Service Retirement and Disability Fund a sum as provided by section 8334(a) of title 5, except that such sum shall be determined by applying to the total basic pay (as defined in section 8331(3) of title 5 and except as hereinafter provided) paid to the employees of the corporation who are covered by the civil service retirement law, the per centum rate determined annually by the Director of the Office of Personnel Management to be the excess of the total normal cost per centum rate of the civil service retirement system over the employee deduction rate specified in section 8334(a) of title 5. The corporation shall also pay into the Civil Service Retirement and Disability Fund such portion of the cost of administration of the fund as is determined by the Director of the Office of Personnel Management to be attributable to its employees. Notwithstanding the foregoing provisions, there shall not be considered for the purposes of the civil service retirement law that portion of the basic pay in any one year of any officer or employee of the corporation which exceeds the basic pay provided for positions listed in section 5312 of title 5 on the last day of such year: *Provided*, That with respect to any person whose employment is made subject to the civil service retirement law by section 806 of the Housing and Community Development Act of 1974, there shall not be considered for the purposes of such law that portion of his basic pay in any one year which exceeds the basic pay provided for positions listed in section 5316 of such title 5 on the last day of such year. Except as provided in this subsection, the corporation shall not be subject to the provisions of title 5.

[*See main edition for text of* (e) *to* (g)]

(h) Regulatory power over Federal National Mortgage Association; approval for issuance of stock, obligations, securities, or other instruments; relation of mortgage purchases to national goal; audits; reports; review and study; transmittal to Congress

The Secretary of Housing and Urban Development shall have general regulatory power over the Federal National Mortgage Association and shall make such rules and regulations as shall be necessary and proper to insure that the purposes of this subchapter are accomplished. No stock, obligation, security, or other instrument shall be issued by the corporation without the prior approval of the Secretary. The Secretary may require that a reasonable portion of the corporation's mortgage purchases be related to the national goal of providing adequate housing for low and moderate income families, but with reasonable economic return to the corporation. The Secretary may examine and audit the books and financial transactions of the corporation, and he may require the corporation to make such reports on its activities as he deems advisable. Pursuant to the authority provided in this subsection, the Secretary shall conduct a review of the financial operations of the corporation and undertake a study of the extent to which the activities of the corporation meet the purposes of this subchapter. Such review and study shall be completed and transmitted to the Congress on or before July 1, 1978.

(As amended Oct. 12, 1977, Pub. L. 95-128, title IV, § 408(c), 91 Stat. 1138; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

AMENDMENTS

1977—Subsec. (h). Pub. L. 95-128 inserted provision for review of the financial operations of the corporation and a study respecting how the activities of the corporation meet the purposes of this subchapter and transmittal of the review and study to the Congress.

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" was substituted for "United States Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as pro-

vided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 1723e. Interim mortgage purchasing authority of Association

(a) Finding of necessity and directive by Secretary; homeownership opportunities for moderate-income families; termination; financing housing in older or declining neighborhoods: regulations

(1) Whenever the Secretary finds inflationary conditions and related governmental actions or other economic conditions are having a severely disproportionate effect on the housing industry and the resulting reduction in the volume of home construction or acquisition threatens seriously to affect the economy and to delay the orderly achievement of the national housing goals contained in title XVI of the Housing and Urban Development Act of 1968, the Secretary shall direct the Association to begin making commitments to purchase and to purchase mortgages in accordance with the provisions of this section. To the extent feasible and consistent with the primary purpose of this section to stabilize housing production, the Secretary may direct the exercise of the authority conferred by this section to promote homeownership opportunities for moderate-income families.

[*See main edition for text of* (2)]

(3) In carrying out the authority conferred by this section, the Secretary may require the Association to utilize a part of the authority to purchase mortgages under this section for the purchase of mortgages executed to finance the rehabilitation or acquisition and rehabilitation of housing in older or declining neighborhoods to the extent such action is feasible and consistent with the primary purpose of this section, and for the purpose of this paragraph, the Secretary is authorized to prescribe such regulations as may be appropriate.

(b) Implementation pursuant to directive; mortgages subject to commitments to purchase, service, and sale

Whenever the Secretary issues a directive under subsection (a)(1) of this section, the Association shall make commitments to purchase and purchase, and may service, sell (with or without recourse), or otherwise deal in, mortgages (1) which cover more than four-family residences (including cooperatives and condominiums and the individual units therein) and which are insured under this chapter and chapter 37 of title 38, or (2) which cover one- to four-family residences and which are insured under this chapter or guaranteed under chapter 37 of title 38 or by qualified private insurers as determined by the Association or the outstanding principal balances of which do not exceed 80 per centum of the value of the property securing the mortgages. A mortgage may be purchased under this section only if—

[*See main edition for text of* (A)]

(B) such mortgage involves an original principal obligation not to exceed $42,000 ($49,000 in the case of any property with respect to which assistance payments pursuant to section 1437f of title 42 are being or will be made and which is located in any geographical area where the Secretary authorizes an increase on the basis of a finding that cost levels so require) per family residence or dwelling unit, and except that the original principal obligation may not exceed $55,000 in the case of properties in Alaska, Hawaii, and Guam;

[*See main edition for text of* (C)]

(D) such mortgage involves a principal residence the sales price of which does not exceed $48,000 ($52,000 in high-cost areas as determined by the Secretary and $55,000 in the case of any property with respect to which assistance payments pursuant to section 1437f of title 42 are being or will be made and which is located in any geographical area where the Secretary authorizes an increase on the basis of a finding that cost levels so require) per family residence or dwelling unit, except that such sales price in Alaska, Hawaii, and Guam may not exceed $65,000.

[*See main edition for text of* (c) *to* (f)]

(g) Limitation on amount of purchases and commitments

The total amount of purchases and commitments authorized by the Secretary to be made pursuant to this section shall not exceed $7,750,000,000 outstanding at any one time. Such total amount shall be increased on or after July 2, 1975, by such amount as is approved in an appropriation Act, but not to exceed $10,000,000,000, and the Association shall not issue obligations pursuant to this section utilizing authority which is conferred by this sentence or which is conferred by the first sentence of this subsection but uncommitted on October 18, 1975, except as approved in appropriation Acts. The Association's purchases and commitments under this section during fiscal year 1978 may not exceed $7,500,000,000.

[*See main edition for text of* (h)]

(As amended Oct. 12, 1977, Pub. L. 95-128, title IV, § 407(a)-(d), 91 Stat. 1137, 1138.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, known as the National Housing Act. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-128, § 407(a), authorized the Secretary to promote homeownership opportunities for moderate-income families.

Subsec. (a)(3). Pub. L. 95-128, § 407(b), added par. (3).

Subsec. (b). Pub. L. 95-128, § 407(c), inserted parenthetical text respecting purchase of mortgages involving an original principal obligation not exceeding $49,000 in par. (B) and $55,000 in par. (D) where cost levels of the geographical area so require.

Subsec. (g). Pub. L. 95-128, § 407(d), added provision limiting the Association's purchases and commitments under this section during fiscal year 1978 to $7,500,000,000.

EFFECTIVE DATE

Section 3(b) of Pub. L. 93-449, as amended by Pub. L. 94-50, title II, § 207, July 2, 1975, 89 Stat. 256; Pub. L. 94-375, § 13(d), Aug. 3, 1976, 90 Stat. 1075; Pub. L. 95-128, title IV, § 407(e), Oct. 12, 1977, 91 Stat. 1138; Pub. L. 95-406, § 3, Sept. 30, 1978, 92 Stat. 880; Pub. L. 95-557, title III, § 303, Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96-71, § 3, Sept. 28, 1979, 93 Stat. 502; Pub. L. 96-105, § 3, Nov. 8, 1979, 93 Stat. 795; Pub. L. 96-153, title III, § 303, Dec. 21, 1979, 93 Stat. 1112, provided that: "The amendment made by subsection (a) [enacting this section] becomes effective upon the date of enactment of this Act [Oct. 18, 1974] and shall remain in effect until October 1, 1980 except that it shall remain in effect after such date to the extent necessary (1) to honor commitments to purchase mortgages issued prior to such date, and (2) to provide for the liquidation of assets and discharge of liabilities acquired or incurred prior to such date."

§ 1723f. Purchase of energy conserving improvement loans

(a) Authority of Association

As soon as practicable after November 9, 1978, the Secretary shall direct the Association to begin making commitments to purchase, and to purchase, loans and advances of credits (and related purchase certificates and other related instruments) in accordance with this section.

(b) Transactions involving insured loans and advances of credit; conditions of purchase

In accordance with the directive issued by the Secretary under subsection (a) of this section, the Association shall make commitments to purchase and purchase, and may service, sell (with or without recourse), or otherwise deal in, loans and advances of credit (and related purchase certificates and other related instruments) which are insured under title I of the National Housing Act [12 U.S.C. 1702 et seq.] and which are made to low- and moderate-income families for the purpose of purchasing and installing energy conserving improvements in one- to four-family dwelling units owned by such families. A loan or advance of credit may be purchased under this section only if—

(1) the term of repayment does not exceed 15 years and is not less than 5 years, except that there shall be no penalty imposed if the borrower repays such loan or advance of credit at any time before the term of repayment expires;

(2) such loan or advance of credit involves an interest rate which the Secretary (after consulting with the Secretary of Agriculture and the Secretary of Energy and after taking into account the probable scope of the program at such rate and the impact a program at such rate may have on credit markets, the Federal budget, and on inflation) establishes, for the purpose of encouraging the making of loans and advances of credit to be purchased under this section, at or below the maximum interest rate permissible for such loan or advance of credit insured under title I of the National Housing Act [12 U.S.C. 1702 et seq.], but in no event shall such rate be below the current average yield on outstanding interest bearing obligations of the United States of comparable maturities then forming a part of the public debt (computed at the end of the fiscal year next proceeding[1] the date on which the loan or advance is made, and adjusted to the nearest one-eighth of 1 per centum) plus an allowance adequate to cover administrative costs;

(3) the amount of such loan or advance of credit does not exceed $2,500;

(4) such loan or advance of credit is not used for the refinancing of any extension of credit; and

(5) the energy conserving improvements financed by such loan or advance of credit are purchased and installed after November 9, 1978.

(c) Priority to elderly and handicapped

The Secretary shall direct the Association to give priority to purchasing loans and advances of credit under this section which are made to low- and moderate-income elderly or handicapped persons or to families with which such persons reside.

(d) Issuance of obligations to Secretary of Treasury

The Association may issue, to the extent and in such amounts as may be approved in appropriation Acts, to the Secretary of the Treasury its obligations in an amount outstanding at any one time sufficient to enable the Association to carry out its functions under this section. Each such obligation shall mature at such time and be redeemable at the option of the Association in such manner as may be determined by the Association, and shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligation of the Association. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Association issued under this section, and for such purposes the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include any purchase of the Association's obligations hereunder.

(e) Application of local usury and other laws

No State or local usury law or comparable law establishing interest rates or prohibiting or limiting the collection or amount of discount points or other charges in connection with loan transactions and no State law prohibiting coverage of loan insurance required by the Association shall apply to transactions under this section.

(f) Sale of loans and advances of credit; payment for services

The Association is authorized to—

(1) sell loans and advances of credit purchased under this section at prices which it determines will help promote the objectives of assuring that operations under this section

[1] So in original. Probably should be "preceding".

are, to the extent feasible, fully self-supporting; and

(2) pay for services performed in carrying out its functions under this section without regard to any limitation on administrative expenses heretofore enacted.

(g) Maximum amount of outstanding purchases and commitments

The total amount of outstanding purchases and commitments authorized by the Secretary to be made pursuant to this section shall not exceed amounts approved in appropriations Acts, but in no case may such amount exceed $3,000,000,000 at any one time.

(h) Establishment of purchase price for loans and advances of credit

The Secretary shall establish a purchase price to be paid by the Association for loans and advances of credit under this section which shall be adequate to compensate the lender for a reasonable return on such loan or advance, plus such reasonable costs as are normally incurred in originating, servicing, and otherwise processing such loans and advances.

(i) Purchase with recourse

Any loan or advance of credit purchased under this section shall be purchased with recourse to the originator.

(j) Definitions

For purposes of this section—

(1) the term "low- and moderate-income family" means a family, including a single individual, whose income does not exceed 100 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 100 per centum of the median for the area on the basis of his findings that such variations are necessary because of prevailing levels of construction costs, usually high- or low-median family incomes, or other factors;

(2) the term "energy conserving improvements" shall have the same meaning given such term in subparagraph (2) of the last paragraph of section 2(a) of the National Housing Act [12 U.S.C. 1703(a)]; and

(3) the terms "elderly" and "handicapped person" shall have the meaning given such terms by paragraphs (3) and (5), respectively, of section 412 of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6862].

(June 27, 1934, ch. 847, title III, § 314, as added Pub. L. 95–619, title II, § 242, Nov. 9, 1978, 92 Stat. 3228.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. II(b), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title I of the National Housing Act is classified generally to subchapter I (§ 1702 et seq.) of this chapter. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Second Liberty Bond Act, referred to in subsec. (d), is act Sept. 24, 1917, ch. 56, 40 Stat. 288, as amended. For complete classification of this Act to the Code, see References in Text note set out under section 774 of Title 31, Money and Finance, and Tables.

§ 1723g. Standby authority to purchase loans for energy conserving improvements

(a) Authority of Association; termination of activities

(1) Whenever the Secretary finds that insufficient credit is available on a national basis to finance the purchase and installation of energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 2(a) of the National Housing Act [12 U.S.C. 1703(a)]) to an extent which the Secretary determines is necessary to advance the achievement of the national program of energy conservation in residential dwelling units, the Secretary shall direct the Association to begin making commitments to purchase, and to purchase, loans and advances of credit (and related purchase certificates and other related instruments) in accordance with this section.

(2) The Secretary may direct the Association to terminate its activities under this section whenever the Secretary determines that the conditions which gave rise to the determination under paragraph (1) are no longer present.

(b) Transactions involving insured loans and advances of credit

In accordance with the directive issued by the Secretary under subsection (a) of this section, the Association shall make commitments to purchase and purchase, and may service, sell (with or without recourse), or otherwise deal in, loans and advances of credit (and related purchase certificates and other related instruments) which are insured under title I of the National Housing Act [12 U.S.C. 1702 et seq.] and made to owners of one- to four-family dwelling units or insured under section 241 of the National Housing Act [12 U.S.C. 1715z–6] and which are made for the purpose of purchasing and installing energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 2(a) of such Act [12 U.S.C. 1703(a)]) in dwelling units.

(c) Issuance of obligations to Secretary of Treasury

The Association may issue, to the extent and in such amounts as may be approved in appropriation Acts, to the Secretary of the Treasury its obligations in an amount outstanding at any one time sufficient to enable the Association to carry out its functions under this section. Each such obligation shall mature at such time and be redeemable at the option of the Association in such manner as may be determined by the Association, and shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligation of the Association. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Association issued under this section, and for such purposes the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended

to include any purchase of the Association's obligations hereunder.

(d) Application of local usury and other laws

No State or local usury law or comparable law establishing interest rates or prohibiting or limiting the collection or amount of discount points or other charges in connection with loan transactions and no State law prohibiting the coverage of loan insurance required by the Association shall apply to transactions under this section.

(e) Sale of loans and advances of credit; payment for services

The Association is authorized to—

(1) sell loans and advances of credit purchased under this section at prices which it determines will help promote the objective of assuring that operations under this section are, to the extent feasible, fully self-supporting; and

(2) pay for services performed in carrying out its functions under this section without regard to any limitation on administrative expenses heretofore enacted.

(f) Maximum amount of outstanding purchases and commitments

The total amount of outstanding purchases and commitments authorized by the Secretary to be made pursuant to this section shall not exceed amounts approved in appropriation Acts, but in no case may such amounts exceed $2,000,000,000 at any one time.

(g) Conditions of purchase

A loan or advance of credit may be purchased under this section only if—

(1) such loan or advance of credit is not used for the refinancing of an extension of credit; and

(2) the energy conserving improvements financed by such loan or advance of credit are purchased and installed after November 9, 1978.

(June 27, 1934, ch. 847, title III, § 315, as added Pub. L. 95-619, title II, § 243, Nov. 9, 1978, 92 Stat. 3230.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (b), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title I of the National Housing Act is classified generally to subchapter I (§ 1702 et seq.) of this chapter. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Second Liberty Bond Act, referred to in subsec. (c), is act Sept. 24, 1917, ch. 56, 40 Stat. 288, as amended. For complete classification of this Act to the Code, see References in Text note set out under section 774 of Title 31, Money and Finance, and Tables.

§ 1723h. Purchase of loans for solar energy systems

(a) Authority of Association

The Secretary shall direct the Association to begin making commitments to purchase, and to purchase, loans and advances of credits (and related purchase certificates and other related instruments) in accordance with this section.

(b) Transactions involving insured loans and advances of credit; conditions of purchase

In accordance with the directive issued by the Secretary under subsection (a) of this section, the Association shall make commitments to purchase and purchase, and may service, sell (with or without recourse), or otherwise deal in, loans and advances of credit (and related purchase certificates and other related instruments) which are made to owners of a one- to four-family dwelling units and insured under title I of the National Housing Act [12 U.S.C. 1702 et seq.] and which are made for the purpose of purchasing and installing solar energy systems (as defined in subparagraph (3) of the last paragraph of section 2(a) of such Act [12 U.S.C. 1703(a)]) in such dwelling units. A loan or advance of credit may be purchased under this section only if—

(1) the term of repayment does not exceed fifteen years, except that there shall be no penalty imposed if the borrower repays such loan or advance of credit at any time before the term of repayment expires;

(2) subject to subsection (i) of this section, such loan or advance of credit involves an interest rate which the Secretary (after consulting with the Secretary of Energy) establishes and which is not less than the current average yield on outstanding interest bearing obligations of the United States of comparable maturities then forming a part of the public debt (computed at the end of the fiscal year next preceding the date on which the loan or advance is made, and adjusted to the nearest one-eighth of 1 per centum) plus an allowance adequate to cover administrative costs and not more than the maximum interest rate permissible for such a loan or advance of credit insured under title I of the National Housing Act [12 U.S.C. 1702 et seq.];

(3) the amount of such loan or advance of credit does not exceed $8,000;

(4) the security for such loan or advance of credit is acceptable to the Secretary;

(5) such loan or advance of credit is not used for the refinancing of any other extension of credit; and

(6) the solar energy system financed by such loan or advance of credit is purchased and installed after November 9, 1978.

(c) Issuance of obligations to Secretary of Treasury

The Association may issue, to the extent and in such amounts as may be approved in appropriation Acts, to the Secretary of the Treasury its obligations in an amount outstanding at any one time sufficient to enable the Association to carry out its functions under this section. Each such obligation shall mature at such time and be redeemable at the option of the Association in such manner as may be determined by the Association, and shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligation of the Association. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Association issued

under this section, and for such purposes the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include any purchase of the Association's obligations hereunder.

(d) Application of local usury and other laws

No State or local usury law or comparable law establishing interest rates or prohibiting or limiting the collection or amount of discount points or other charges in connection with loan transactions and no State law prohibiting coverage of loan insurance required by the Association shall apply to transactions under this section.

(e) Sale of loans and advances of credit; payment for services

The Association is authorized to—

(1) sell loans and advances of credit purchased under this section at prices which it determines will help promote the objectives of assuring that operations under this section are, to the extent feasible, fully self-supporting; and

(2) pay for services performed in carrying out its functions under this section without regard to any limitation on administrative expenses heretofore enacted.

(f) Maximum amount of outstanding purchases and commitments

The total amount of outstanding purchases and commitments authorized by the Secretary to be made pursuant to this section shall not exceed amounts approved in appropriation Acts, but in no case may such amount exceed $100,000,000 at any one time.

(g) Establishment of purchase price for loans and advances of credit

The Secretary shall establish a purchase price to be paid by the Association for loans and advances of credit under this section which shall be adequate to compensate the lender for a reasonable return on such loan or advance, plus such reasonable costs as are normally incurred in originating, servicing, and otherwise processing such loans and advances.

(h) Purchase with recourse

Any loan or advance of credit purchased under this section shall be purchased with recourse to the originator.

(i) Lowering interest rate to increase utilization of available funds

If, after one year following the date on which the Association may issure[1] obligations under subsection (c) of this section, 50 per centum of the amount available during such one-year period for financing the program established by this section has not been utilized, the Secretary shall provide that loans and advances of credit which may be purchased under this section shall have the lowest interest rate authorized by subsection (b)(2) of this section, unless the Secretary finds that the interest rate is not the primary impediment to carrying out such program and that lowering the interest rate will not increase the utilization of the funds made available to carry out such program.

(j) Termination of authority to purchase

The authority to purchase loans and advances of credit under this section shall terminate five years after November 9, 1978.

(June 27, 1934, ch. 847, title III, § 316, as added Pub. L. 95-619, title II, § 244, Nov. 9, 1978, 92 Stat. 3231.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (b), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title I of the National Housing Act is classified generally to subchapter I (§ 1702 et seq.) of this chapter. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Second Liberty Bond Act, referred to in subsec. (c), is act Sept. 24, 1917, ch. 56, 40 Stat. 288, as amended. For complete classification of this Act to the Code, see References in Text note set out under section 774 of Title 31, Money and Finance, and Tables.

SUBCHAPTER IV—INSURANCE OF SAVINGS AND LOAN ACCOUNTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2902 of this title.

§ 1724. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1425a, 1425b, 1470, 1727, 1728, 1831c, 1832, 2902 of this title; title 15 section 80a-6; title 18 section 2113; title 26 section 7701; title 31 section 1052.

§ 1725. Creation of Federal Savings and Loan Insurance Corporation

[*See main edition for text of* (a) *to* (c)]

(d) Financial operations

For the purposes of this subchapter, the Corporation shall have power to borrow money, and to issue notes, bonds, debentures, or other such obligations upon such terms and conditions as the Federal Home Loan Bank Board may determine. Moneys of the Corporation not required for current operations shall be deposited in the Treasury of the United States, or upon the approval of the Secretary of the Treasury, in any Federal Reserve bank, or shall be invested in obligations of, or guaranteed as to principal and interest by, the United States. When designated for that purpose by the Secretary of the Treasury, the Corporation shall be a depositary of public money under such regulations as may be prescribed by the Secretary of the Treasury, and may also be employed as fiscal agent of the United States, and it shall perform all such reasonable duties as depositary of public money and fiscal agent as may be required of it. Insured institutions shall be depositaries of public money and may be employed as fiscal agents of the United States. The Secretary of the Treasury is authorized to deposit public money in such insured institu-

[1] So in original. Probably should be "issue".

tions, and shall prescribe such regulations as may be necessary to enable such institutions to become depositaries of public money and fiscal agents of the United States. Each insured institution shall perform all such reasonable duties as depositary of public money and fiscal agent of the United States as may be required of it including services in connection with the collection of taxes and other obligations owed the United States.

[*See main edition for text of* (e) *to* (j)]

(As amended Oct. 28, 1977, Pub. L. 95-147, § 2(b), 91 Stat. 1227.)

AMENDMENTS

1977—Subsec. (d). Pub. L. 95-147 provided that insured institutions be depositaries of public money, authorized insured institutions to be employed as fiscal agents of the United States, authorized the Secretary of the Treasury to deposit public money in such insured institutions, and required certain duties to be performed by each insured institution in its capacity as a depositary or fiscal agent.

§ 1726. Insurance of accounts and eligibility provisions

(a) Insurance of accounts

It shall be the duty of the Corporation to insure the accounts of all Federal savings and loan associations and Federal mutual savings banks, and it may insure the accounts of building and loan, savings and loan, and homestead associations and cooperative banks organized and operated according to the laws of the State, District, Territory, or possession in which they are chartered or organized.

[*See main edition for text of* (b) *to* (d)]

(As amended Nov. 10, 1978, Pub. L. 95-630, title XII, § 1203, 92 Stat. 3711.)

REFERENCES IN TEXT

Federal savings and loan association, referred to in subsec. (b), deemed also a reference to Federal mutual savings bank, see section 1462 of this title.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-630 inserted reference to Federal mutual savings banks.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630 set out as an Effective Date note under section 375b of this title.

§ 1728. Payment of insurance; limitations respecting claims; public funds; aggregate amount of funds; pension or profit-sharing plans

[*See main edition for text of* (a) *to* (c)]

(d) Insurance and investment of public funds

(1) Notwithstanding any limitation in this subchapter or in any other provision of law relating to the amount of deposit insurance available for any one account, in the case of an insured member who is—

[*See main edition for text of* (i) *and* (ii)]

(iii) an officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing the same in an insured institution in the District of Columbia;

(iv) an officer, employee, or agent of the Commonwealth of Puerto Rico, or of the Virgin Islands, or of any territory or possession of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing the same in an insured institution in the Commonwealth of Puerto Rico, the Virgin Islands, or any such territory or possession, respectively; or

(v) an officer, employee, or agent of any Indian tribe (as defined in section 1452(c) of title 25) or agency thereof having official custody of tribal funds and lawfully investing the same in an insured institution;

the account of such insured member shall be insured in an amount not to exceed $100,000 per account.

[*See main edition for text of* (2)]

(3) Notwithstanding any limitation in this subchapter or in any other provision of law relating to the amount of deposit insurance available for any one account, funds invested in an insured institution pursuant to a pension or profit-sharing plan described in section 401(d) of title 26, and funds invested in an insured institution in the form of individual retirement accounts as described in section 408(a) of title 26, shall be insured in the amount of $100,000 per account. As to any plan qualifying under section 401(d) or section 408(a) of title 26, the term "per account" means the present vested and ascertainable interest of each beneficiary under the plan, excluding any remainder interest created by, or as a result of, the plan.

(As amended Nov. 10, 1978, Pub. L. 95-630, title XIV, § 1401(b), 92 Stat. 3712; Dec. 21, 1979, Pub. L. 96-153, title III, § 323(b), 93 Stat. 1120.)

AMENDMENTS

1979—Subsec. (d)(1)(v). Pub. L. 96-153 added subsec. (d)(1)(v).

1978—Subsec. (d)(3). Pub. L. 95-630 added subsec. (d)(3).

EFFECTIVE DATE OF 1979 AMENDMENT

Section 323(e) of Pub. L. 96-153 provided that: "The amendments made by subsections (a) through (d) [amending sections 1728, 1757, 1787, 1821 of this title] are not applicable to any claim arising out of the closing of a bank, savings and loan association, or credit union prior to the date of enactment of this Act [Dec. 21, 1979], but shall be applicable to any such claim arising on or after such date."

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1402 of title XIV of Pub. L. 95-630 provided that: "This title [amending sections 1728, 1787, and 1821 of this title] shall take effect upon enactment [Nov. 10, 1978]."

§ 1729. Liquidation of insured institutions

[*See main edition for text of* (a) *to* (e)]

(f) Loans and purchases by Corporation

(1) In order to prevent a default in an insured institution or in order to restore an insured in-

stitution in default to normal operation, the Corporation is authorized, in its discretion and upon such terms and conditions as it may determine, to make loans to, to purchase the assets of, or to make a contribution to, an insured institution or an insured institution in default.

(2) Whenever an insured institution is in default or, in the judgment of the Corporation, is in danger of default, the Corporation may, in order to facilitate a merger or consolidation of such insured institution with another insured institution or the sale of the assets of such insured institution and the assumption of its liabilities by another insured institution and upon such terms and conditions as the Corporation may determine, purchase any such assets or assume any such liabilities, or make loans to such other insured institution, or guarantee such other insured institution against loss by reason of its merging or consolidating with or assuming the liabilities and purchasing the assets of such insured institution in or in danger of default.

(3) No contribution or guarantee shall be made pursuant to paragraphs (1) or (2) of this subsection in an amount in excess of that which the Corporation finds to be reasonably necessary to save the cost of liquidating such insured institution in or in danger of default, but if the Corporation determines that the continued operation of such institution is essential to provide adequate savings or home financing services in its community, such limitation upon the amount of a contribution or guarantee shall not apply.

(As amended Nov. 10, 1978, Pub. L. 95–630, title I, § 105(b)(2), 92 Stat. 3647.)

REFERENCES IN TEXT

Federal savings and loan association, referred to in subsecs. (a) to (c), deemed also a reference to Federal mutual savings bank, see section 1462 of this title.

AMENDMENTS

1978—Subsec. (f). Pub. L. 95–630 designated existing provisions as pars. (1) and (3) and, as so designated, in par. (1) inserted "and upon such terms and conditions as it may determine" following "in its discretion" and in par. (3) added provision that if the Corporation determines that the continued operation of such institution is essential to provide adequate savings or home financing services in its community, such limitation upon the amount of a contribution or guarantee shall not apply, and added par. (2).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630 set out as an Effective Date note under section 375b of this title.

§ 1730. Termination of insurance and enforcement provisions

[See main edition for text of (a) to (d)]

(e) Cease-and-desist proceedings

(1) If, in the opinion of the Corporation, any insured institution, institution which has insured accounts or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution is engaging or has engaged, or the Corporation has reasonable cause to believe that the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution is about to engage, in an unsafe or unsound practice in conducting the business of such institution, or is violating or has violated, or the Corporation has reasonable cause to believe that the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Corporation in connection with the granting of any application or other request by the institution or any written agreement entered into with the Corporation, including any agreement entered into under section 1726 of this title, the Corporation may issue and serve upon the institution or such director, officer, employee, agent, or other person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Corporation at the request of any party so served. Unless the party or parties so served shall appear at the hearing by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the Corporation shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Corporation may issue and serve upon the institution or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the institution or directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such institution to cease and desist from the same, and further to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease-and-desist order shall become effective at the expiration of thirty days after service of such order upon the institution or the party or parties so served (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Corporation or a reviewing court.

(3) This subsection and subsections (f), (g), (h), (j), (k), (m)(3), (n), (o), (p), and (q) of this section shall apply to any savings and loan holding company, and to any subsidiary (other

than an insured institution) of a savings and loan holding company, as those terms are defined in section 1730a of this title, and to any affiliate service corporation of an insured institution in the same manner as they apply to insured institutions.

(f) Temporary cease-and-desist orders; enforcement

(1) Whenever the Corporation shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution or any institution any of the accounts of which are insured pursuant to paragraph (1) of subsection (e) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the institution, or is likely to seriously weaken the condition of the institution or otherwise seriously prejudice the interests of its insured members prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (c) of this section, the Corporation may issue a temporary order requiring the institution or such director, officer, employee, agent, or other person to cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition or prejudice pending completion of such proceedings. Such order shall become effective upon service upon the institution and/or such director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Corporation shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the institution or such director, officer, employee, agent, or other person, until the effective date of any such order.

(2) Within ten days after the institution concerned or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution has been served with a temporary cease-and-desist order, the institution or such director, officer, employee, agent, or other person may apply to the United States district court for the judicial district in which the principal office of the institution is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the institution or such director, officer, employee, agent, or other person under paragraph (1) of subsection (e) of this section, and such court shall have jurisdiction to issue such injunction.

[See main edition for text of (3)]

(g) Suspension or removal of director or officer; stay of suspension and/or prohibition

(1) Whenever, in the opinion of the Corporation, any director or officer of an insured institution has committed any violation of law, rule, or regulation or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the institution or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Corporation determines that the institution has suffered or will probably suffer substantial financial loss or other damage or that the interests of its insured members could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty or that the director or officer has received financial gain by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, or one which demonstrates a willful or continuing disregard for the safety or soundness of the institution, the Corporation may serve upon such director or officer a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.

(2) Whenever, in the opinion of the Corporation, any director or officer of an insured institution, by conduct or practice with respect to another insured institution or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personel[1] dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to continue as a director or officer and, whenever, in the opinion of the Corporation, any other person participating in the conduct of the affairs of an insured institution, by conduct or practice with respect to such institution or other insured institution or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and in addition, has evidenced his unfitness to participate in the conduct of affairs of such insured institution, the Corporation may serve upon such director, officer, or other person a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.

[See main edition for text of (3) to (5)]

(h) Suspension or removal of director or officer charged with felony

(1) Whenever any director or officer of an insured institution, or other persons participating in the conduct of the affairs of such institution, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in

[1] So in original. Probably should be "personal".

a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Corporation may, if continued service or participation by the individual may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the institution, by written notice served upon such director, officer, or other person suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the institution. A copy of such notice shall also be served upon the institution. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Corporation. In the event that a judgment of conviction with respect to such crime is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Corporation may, if continued service or participation by the individual may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the institution, issue and serve upon such director, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the institution except with the consent of the Corporation. A copy of such order shall also be served upon such institution, whereupon such director or officer shall cease to be a director or officer of such institution. A finding of not guilty or other disposition of the charge shall not preclude the Corporation from thereafter instituting proceedings to remove such director, officer, or other person from office or to prohibit further participation in institution affairs, pursuant to paragraph (1), (2), or (3) of subsection (g) of this section. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the Corporation.

(2) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the director, officer, or other person concerned may request in writing an opportunity to appear before the Corporation to show that the continued service to or participation in the conduct of the affairs of the institution by such individual does not, or is not likely to, pose a threat to the interests of the institution's depositors or threaten to impair public confidence in the institution. Upon receipt of any such request, the Corporation shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of the concerned director, officer, or other person) and place at which the director, officer, or other person may appear, personally or through counsel, before one or more members of the Corporation or designated employees of the Corporation to submit written materials (or, at the discretion of the agency, oral testimony) and oral argument. Within sixty days of such hearing, the Corporation shall notify the director, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the institution will be continued, terminated or otherwise modified, or whether the order removing said director, officer, or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the institution will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Corporation's decision, if adverse to the director, officer, or other person. The Corporation is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

[*See main edition for text of* (i)]

(j) Hearings and judicial review

(1) Any hearing provided for in this section (other than the hearing provided for in subsection (h)(2) of this section) shall be held in the Federal judicial district or in the territory in which the principal office of the institution is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5. Such hearing shall be private, unless the Corporation, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After such hearing, and within ninety days after the Corporation has notified the parties that the case has been submitted to it for final decision, the Corporation shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the Corporation may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Corporation may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to the proceeding, or any person required by an order issued under this section to cease and desist from any of the violations or practices stated therein, may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the institution or the director or officer or other person concerned, or an order issued under subsection (h)(1) of this section), by filing in the court of appeals of the United States for the circuit in which the principal office of the institution is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the

order of the Corporation be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Corporation, and thereupon the Corporation shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall, except as provided in the last sentence of said paragraph (1), be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Corporation. Review of such proceedings shall be had as provided in chapter 7 of title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28.

[*See main edition for text of* (3)]

(k) Jurisdiction and enforcement; penalty

[*See main edition for text of* (1) *and* (2)]

(3)(A) Any insured institution or any institution any of the accounts of which are insured which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such an institution who violates the term of any order which has become final and was issued pursuant to subsection (e) or (f) of this section shall forfit[1] and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Corporation by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(B) In determining the amount of the penalty the Corporation shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the insured institution or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(C) The insured institution or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (D). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(D) Any insured institution or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the insured institution is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Corporation. The Corporation shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28. The findings of the agency shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5.

(E) If any insured institution or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Corporation shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(F) The Corporation shall promulgate regulations establishing procedures necessary to implement this paragraph.

(G) All penalties collected under authority of this paragraph shall be covered into the Treasury of the United States.

(*l*) Reporting requirements; control and stock defined

[*See main edition for text of* (1) *to* (5)]

(6) As used in this subsection, the term "stock" means rights, interests, or powers with respect to a mutual institution and the term "insured institution" means a mutual insured institution.

[*See main edition for text of* (m) *to* (p)]

(q) Change in control of insured institutions

(1) No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any insured institution through a purchase[1] assignment, transfer, pledge, or other disposition of voting stock of such insured institution unless the Corporation has been given sixty days' prior written notice of such proposed acquisition and within that time period the Corporation has not issued a notice disapproving the proposed acquisition or extending up to another thirty days the period during which a disapproval may issue. The period for disapproval may be further extended only if the Corporation determines that any acquiring party has not furnished all the information required under paragraph (6) of this subsection or that in its judgment any material information submitted is substantially inaccurate. An acquisition may be made prior to expiration of the disapproval period if the Corporation issues written notice of its intent not to disapprove the action. For purposes of this subsection, the term "insured institution" shall include any "savings and loan holding company", as that term is defined in section 1730a of this title, which has control of any such insured institution.

(2) Upon receiving any notice under this subsection, the Corporation shall forward a copy thereof to the appropriate State savings and

[1] So in original. Probably should be "forfeit".

[1] So in original. Comma should probably separate "purchase" and "assignment".

loan association supervisory agency if the insured institution the voting shares of which are sought to be acquired is a State chartered institution, and shall allow thirty days within which the views and recommendations of such State supervisory agency may be submitted. The Corporation shall give due consideration to the views and recommendations of such State agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this paragraph, if the Corporation determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the probable failure of the institution involved in the proposed acquisition, the Corporation may dispense with the requirement of this paragraph or, if a copy of the notice is forwarded to the State supervisory agency, the Corporation may request that the views and recommendations of such State supervisory agency be submitted immediately in any form or by any means acceptable to the Corporation.

(3) Within three days after its decision to disapprove any proposed acquisition, the Corporation shall notify the acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for the disapproval.

(4) Within ten days of receipt of such notice of disapproval, the acquiring party may request an agency hearing on the proposed acquisition. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The length of the hearing shall be determined by the Corporation. At the conclusion thereof, the Corporation shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

(5) Any person whose proposed acquisition is disapproved after agency hearing under this subsection may obtain review by the United States court of appeals for the circuit in which the home office of the institution to be acquired is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Corporation. The Corporation shall promptly certify and file in such court the record upon which the disapproval was based. The findings of the Corporation shall be set aside if found to be arbitrary or capricious or if found to violate procedures established by this subsection.

(6) Except as otherwise provided by regulation of the Corporation, a notice filed pursuant to this subsection shall contain the following information:

(A) The identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a State or Federal court.

(B) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than ninety days prior to the date of the filing of the notice.

(C) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.

(D) The identity, source, and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons.

(E) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the institution, to sell its assets or merge it with any company or to make any other major change in its business or corporate structure or management.

(F) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation.

(G) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

(H) Any additional relevant information in such form as the Corporation may require by regulation or by specific request in connection with any particular notice.

(7) The Corporation may disapprove any proposed acquisition if—

(A) the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States;

(B) the effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(C) the financial condition of any acquiring person is such as might jeopardize the financial stability of the institution or prejudice

the interests of the depositors of the institution;

(D) the competence, experience, or integrity of any acquiring person or any of the proposed management personnel indicates that it would not be in the interest of the depositors of the institution or in the interest of the public to permit such person to control the institution; or

(E) any acquiring person neglects, fails, or refuses to furnish the Corporation all the information required by the Corporation.

(8) For the purposes of this subsection, the term—

(A) "person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein, and

(B) "control" means the power, directly or indirectly, to direct the management or policies of an insured institution or to vote 25 per centum or more of any class of voting securities of an insured institution.

(9) Whenever any insured institution or an insured bank makes a loan, or loans, secured, or to be secured, by 25 per centum or more of the outstanding voting stock of an insured institution, the president or other chief executive officer of the lending insured institution or insured bank shall promptly report such fact to the Corporation upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year or more or where the stock is that of the newly organized institution prior to its opening.

(10) The reports required by paragraph (9) of this subsection shall contain such of the information referred to in paragraph (6) of this subsection, and such other relevant information, as the Corporation may require by regulation or by specific request in connection with any particular report.

(11) Whenever a change in control occurs, each insured institution shall report promptly to the Corporation any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(12) Without limitation by or on the foregoing provisions of this subsection, the Corporation may require insured institutions and individuals or other persons who have or have had any connection with the management of any insured institution, as defined by the Corporation, to provide, in such manner as the Corporation may prescribe, such periodic or other reports and disclosures, including proxy statements and the solicitation of proxies thereby, as the Corporation may determine to be necessary or appropriate for the protection of investors or the Corporation.

(13) As used in this subsection, the term "stock" means such stock or other equity securities or equity interests in an insured institution which is a stock company, or rights, interests, or powers with respect thereto.

(14) The Corporation is authorized to issue rules and regulations to carry out this subsection.

(15) Within two years after the effective date of the Change in Savings and Loan Control Act of 1978 and each year thereafter in the Corporation's annual report to the Congress, the Corporation shall report to the Congress the results of the administration of this subsection, and make any recommendations as to changes in the law which in the opinion of the Corporation would be desirable.

(16) Any person who willfully violates any provision of this subsection, or any regulation or order issued by the Corporation pursuant thereto, shall forfeit and pay a civil penalty of not more than $10,000 per day for each day during which such violation continues. The Corporation shall have authority to assess such a civil penalty, after giving notice and an opportunity to the person to submit data, views, and arguments, and after giving due consideration to the appropriateness of the penalty with respect to the size of financial resources and good faith of the person charged, the gravity of the violation, and any data, views, and arguments submitted. The agency may collect such civil penalty by agreement with the person or by bringing an action in the appropriate United States district court, except that in any such action, the person against whom the penalty has been assessed shall have a right to trial de novo.

(17) This subsection shall not apply to a transaction subject to section 1730a of this title.

(r) Definitions

(1) As used in this section—

(A) The terms "cease-and-desist order which has become final" and "order which has become final" means a cease-and-desist order, or an order, issued by the Corporation with the consent of the institution or the director or officer or other person concerned, or with respect to which no petition for review of the action of the Corporation has been filed and perfected in a court of appeals as specified in subsection (j)(2) of this section, or with respect to which the action of the court in which said petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in said subsection, or an order issued under subsection (h) of this section.

(B) The term "State" includes the Commonwealth of Puerto Rico.

(C) The term "territory" includes any possession of the United States and any place subject to the jurisdiction of the United States.

(D) The terms "district", "district court", "district court of the United States," and "judicial district" shall have the meanings defined in section 451 of title 28.

(2) As used in subsection (f) of this section, the term "insolvency" means that the assets of an institution are less than its obligations to its creditors and others, including its members.

(3) As used in subsection (g) of this section, the term "violation" includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(4) For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term "officer" as used in this subsection means an employee or officer with management functions, and the term "director" includes an advisory or honorary director, a trustee of an association under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

(As amended Nov. 10, 1978, Pub. L. 95-630, title I, §§ 107(a)(2), (c)(2), (d)(2), (e)(2), 111(b), title II, § 208(c), title VII, §§ 702, 703, 92 Stat. 3650, 3654, 3658, 3661, 3667, 3675, 3687.)

REFERENCES IN TEXT

Federal savings and loan association, referred to in subsec. (a), deemed also a reference to Federal mutual savings bank, see section 1462 of this title.

For effective date of the Change in Savings and Loan Control Act of 1978, referred to in subsec. (q)(15), see Short Title of 1978 Amendment note below and section 2101 of Pub. L. 95-630, set out as a note under section 375b of this title.

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-630, § 107(a)(2), in par. (1) extended coverage of provisions to include directors, officers, employees, agents, or other persons participating in the conduct of the affairs of any insured institution or institution which has insured accounts and added par. (3).

Subsec. (f). Pub. L. 95-630, § 107(c)(2), in pars. (1) and (2) added references to any director, officer, employee, agent, or other person participating in the conduct of the affairs of the institution and in par. (1) inserted "prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (c) of this section" following "insured members" and "and to take affirmative action to prevent such insolvency, dissipation, condition or prejudice pending completion of such proceedings" following "violation or practice".

Subsec. (g)(1). Pub. L. 95-630, § 107(d)(2), inserted "or that the director or officer has received financial gain by reason of such violation or practice or breach of fiduciary duty" preceding ", and that such violation", ", or one which demonstrates a willful or continuing disregard for the safety or soundness of the institution" following "the part of such director or officer", and "or to prohibit his further participation in any manner in the conduct of the affairs of the institution" following "remove him from office".

Subsec. (g)(2). Pub. L. 95-630, § 107(d)(2), inserted references to a willful or continuing disregard for its safety and soundness in two places.

Subsec. (h). Pub. L. 95-630, § 111(b)(1), designated existing provision as par. (1) and, in par. (1) as so designated, among other changes, substituted "crime" for "felony" in two places and "paragraph (1), (2), or (3) of subsection (g)" for "paragraph (1) or (2) of subsection (g)", inserted "which is punishable by imprisonment for a term exceeding one year under State or Federal law" following "or breach of trust" and ", if continued service or participation by the individual may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the institution" following "the Corporation may" in two places, and added provision that any notice of suspension or order of removal issued under this paragraph remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the Corporation, and added par. (2).

Subsec. (j)(1). Pub. L. 95-630, § 111(b)(2), inserted "(other than the hearing provided for in subsection (h)(2) of this section)" following "provided for in this section".

Subsec. (j)(2). Pub. L. 95-630, § 111(b)(3), substituted "subsection (h)(1)" for "subsection (h)".

1978—Subsec. (k)(3). Pub. L. 95-630, § 107(e)(2), added subsec. (k)(3).

Subsec. (*l*)(6). Pub. L. 95-630, § 702, substituted "means rights, interests, or powers with respect to a mutual institution and the term 'insured institution' means a mutual insured institution" for "means such stock or other equity securities or equity interests in an insured institution, or rights, interests, or powers with respect thereto, regardless of whether such institution is a stock company, a mutual institution, or otherwise, as the Corporation may by regulation define for the purposes of this subsection."

Subsec. (q). Pub. L. 95-630, § 703, added subsec. (q). Former subsec. (q) redesignated (r).

Subsec. (r). Pub. L. 95-630, §§ 208(c), 703, redesignated former subsec. (q) as (r) and, as so redesignated, added par. (4).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (e), (f)(1), (2), (g)(1), (2), (h), (j), (*l*)(6), (q), and (r), by sections 107(a)(2), (c)(2), (d)(2), 111(b), 208(c), 702, and 703 of Pub. L. 95-630 effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630 set out as an Effective Date note under section 375b of this title.

Amendment of subsec. (k)(3) by section 107(e)(2) of Pub. L. 95-630, relating to imposition of civil penalties, applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 93 of this title.

SHORT TITLE OF 1978 AMENDMENT

For Short Title of title VII of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3641, as the "Change in Savings and Loan Control Act of 1978", see section 701 of Pub. L. 95-630, set out as a Short Title of 1978 Amendment note under section 1701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1425, 1425a, 1464, 1727, 1730, 2804 of this title; title 15 sections 57a, 1607, 1691c, 1692*l*, 1693o.

§ 1730a. Regulation of holding companies

[*See main edition for text of (a) to (g)*]

(h) Administration and enforcement

[*See main edition for text of (1) and (2)*]

(3)(A) In the course of or in connection with any proceeding under subsection (a)(2)(D) or under subsection (h)(5) of this section, the Corporation or its designated representatives, including any person designated to conduct any hearing under said subsection, shall have power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and the Corporation is empowered to make rules and regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this paragraph may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted. Any party to such proceed-

ings may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this paragraph, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

(B) Any hearing provided for in subsection (a)(2)(D) or under subsection (h)(5) of this section shall be held in the Federal judicial district or in the territory in which the principal office of the institution or other company is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5.

[*See main edition for text of* (4)]

(5)(A) Notwithstanding any other provision of this section, the Corporation may, whenever it has reasonable cause to believe that the continuation by a savings and loan holding company of any activity or of ownership or control of any of its noninsured subsidiaries constitutes a serious risk to the financial safety, soundness, or stability of a savings and loan holding company's subsidiary insured institution and is inconsistent with the sound operation of an insured savings and loan institution or with the purposes of this section or with the Financial Institutions Supervisory Act, order the savings and loan holding company or any of its subsidiaries, after due notice and opportunity for hearing, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Corporation directs in unusual circumstances) its ownership or control of any such noninsured subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the savings and loan holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing savings and loan holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

(B) The Corporation may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith, but except as provided in subsection (k) of this section, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(6) All expenses of the Federal Home Loan Bank Board or of the Corporation under this section shall be considered as nonadministrative expenses.

[*See main edition for text of* (i)]

(j) Penalties

[*See main edition for text of* (1) *to* (3)]

(4)(A) Any company which violates or any individual who participates in a violation of any provision of this section, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Corporation by written notice. As used in the section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(B) In determining the amount of the penalty the Corporation shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the company or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(C) The company or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (D). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(D) Any company or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the company is located, or in the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Corporation. The Corporation shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28. The findings of the Corporation shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5.

(E) If any company or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Corporation shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(F) The Corporation shall promulgate regulations establishing procedures necessary to implement this paragraph.

(G) All penalties collected under authority of this paragraph shall be covered into the Treasury of the United States.

[*See main edition for text of* (k) *and* (l)]

(As amended Nov. 10, 1978, Pub. L. 95-630, title I, §§ 105(b)(1), 106(c), 92 Stat. 3646, 3649.)

REFERENCES IN TEXT

Federal savings and loan association, referred to in subsec. (a)(1)(A), deemed also a reference to Federal mutual savings bank, see section 1462 of this title.

The Financial Institutions Supervisory Act of 1966, referred to in subsec. (h)(5), is Pub. L. 89-695, Oct. 16, 1966, 80 Stat. 1028. For classification of this Act to the Code, see Short Title note under section 1464 of this title and Tables.

AMENDMENTS

1978—Subsec. (h). Pub. L. 95-630, § 105(b)(1), in par. (3) inserted "or under subsection (h)(5)" following "under subsection (a)(2)(D)" in two places, redesignated former par. (5) as (6), and added par. (5).

Subsec. (j)(4). Pub. L. 95-630, § 106(c), added subsec. (j)(4).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (h) by section 105(b)(1) of Pub. L. 95-630 effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630 set out as an Effective Date note under section 375b of this title.

Amendment of subsec. (j)(4) by section 106(c) of Pub. L. 95-630, relating to imposition of civil penalties, applicable as to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 93 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1464, 1725, 1730, 2902, 3201 of this title; title 15 section 18a.

§ 1730e. Insured institutions

(a) Interest rates

If the applicable rate prescribed in this section exceeds the rate an insured institution would be permitted to charge in the absence of this section, such institution may in the case of business or agricultural loans in the amount of $25,000 or more, notwithstanding any State constitution or statute, which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the institution is located, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run.

(b) Interest overcharge; forfeitures; interest payment recovery

If the rate prescribed in subsection (a) of this section exceeds the rate such institution would be permitted to charge in the absence of this section, and such State fixed rate is thereby preempted by the rate described in subsection (a) of this section, the taking, receiving, reserving, or charging a greater rate of interest than that prescribed by subsection (a) of this section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of the interest paid from the institution taking or receiving such interest.

(June 27, 1934, ch. 847, title IV, § 412, as added Dec. 28, 1979, Pub. L. 96-161, title II, § 203, 93 Stat. 1236.)

PRIOR PROVISIONS

A prior section 1730e, Act June 27, 1934, ch. 847, § 412, as added Nov. 5, 1979, Pub. L. 96-104, title I, § 103, 93 Stat. 790, identical to this section as added by Pub. L. 96-161, was repealed by section 212 of Pub. L. 96-161, effective at the close of Dec. 27, 1979, except that its provisions would continue to apply to any loan made in any State on or after Nov. 5, 1979, but prior to such repeal. For the effective date provisions relating to the prior section 1730e as contained in section 107 of Pub. L. 96-104, see Effective Date of 1979 Amendments note set out under section 1831a of this title.

A prior section 1730e, Act June 27, 1934, ch. 847, § 412, as added Oct. 29, 1974, Pub. L. 93-501, title II, § 203, 88 Stat. 1559, identical to this section as added by Pub. L. 96-104, was repealed by section 1 of Pub. L. 96-104 except that its provisions shall continue to apply to any loan made in any State during the period specified in section 206 of Pub. L. 93-501. See Effective and Termination Dates of 1974 Amendments note set out under section 1831a of this title.

EFFECTIVE DATE

Section applicable to loans made in any State during the period beginning on Dec. 28, 1979, and ending on the earliest of (1) in the case of a State statute, July 1, 1980; (2) the date, after Dec. 28, 1979, on which such State adopts a law stating in substance that such State does not want this section to apply with respect to loans made in such State; or (3) the date on which such State certifies that the voters of such State, after Dec. 28, 1979, have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendments to the constitution of such State which prohibits the charging of interest at the rates provided in this section, see section 207 of Pub. L. 96-161, set out as an Effective Date of 1979 Amendments note under section 1831a of this title.

STATES HAVING CONSTITUTIONAL PROVISIONS REGARDING MAXIMUM INTEREST RATES

The provisions of title II of Pub. L. 96-161, which enacted this section and repealed former section 1730e of this title, to continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates, see section 213 of Pub. L. 96-161, set out as a note under section 86a of this title.

SUBCHAPTER V—MISCELLANEOUS

§ 1735c. General Insurance Fund

[*See main edition for text of* (a) *to* (e)]

(f) Authorization of appropriations

There are authorized to be appropriated to cover losses sustained by the General Insurance Fund not to exceed $1,341,000,000, which amount shall be increased by $165,000,000 on October 1, 1978, which shall be increased by not to exceed $93,000,000 on October 1, 1979.

(As amended Apr. 30, 1977, Pub. L. 95-24, title I, § 102, 91 Stat. 55; Oct. 31, 1978, Pub. L. 95-557,

title III, § 310, 92 Stat. 2098; Dec. 21, 1979, Pub. L. 96-153, title III, § 305, 93 Stat. 1112.)

AMENDMENTS

1979—Subsec. (f). Pub. L. 96-153 provided for an increase of $93,000,000 on October 1, 1979.

1978—Subsec. (f). Pub. L. 95-557 added "which amount shall be increased by $165,000,000 on October 1, 1978".

1977—Subsec. (f). Pub. L. 95-24 substituted "$1,341,000,000" for "$500,000,000".

§ 1735f-4. Promotion of energy saving techniques by Secretary of Housing and Urban Development in insured housing

To the maximum extent feasible, the Secretary of Housing and Urban Development shall promote the use of energy saving techniques through minimum property standards established by him for newly constructed residential housing subject to mortgages insured under this chapter. Such standards shall establish energy performance requirements that will achieve a significant increase in the energy efficiency of new construction, until such time as the energy conservation performance standards required under the Energy Conservation Standards for New Buildings Act of 1976 [42 U.S.C. 6831 et seq.] become effective. Such requirements shall be implemented as soon as practicable after November 9, 1978.

(As amended Nov. 9, 1978, Pub. L. 95-619, title II, § 252(a), 92 Stat. 3236.)

REFERENCES IN TEXT

The Energy Conservation Standards for New Buildings Act of 1976, referred to in text, is title III of Pub. L. 94-385, Aug. 14, 1976, 90 Stat. 1144, as amended, which is classified generally to subchapter II (§ 6831 et seq.) of chapter 81 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of Title 42 and Tables.

AMENDMENTS

1978—Pub. L. 95-619 added provision requiring that the minimum property standards established by the Secretary under this section were to contain energy performance requirements to achieve a significant increase in the energy efficiency of new construction.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 1490i.

§ 1735f-6. Secondary mortgages held by State or local governmental agency on insured properties

In carrying out the provisions of subchapter II of this chapter with respect to insuring mortgages secured by a one- to four-family dwelling unit, the Secretary may not deny such insurance for any such mortgage solely because the dwelling unit which secures such mortgage will be subject to a secondary mortgage or loan made or insured, or other secondary lien held, by any State or local governmental agency or instrumentality under terms and conditions approved by the Secretary.

(June 27, 1934, ch. 847, title V, § 528, as added Oct. 31, 1978, Pub. L. 95-557, title III, § 323, 92 Stat. 2102.)

§ 1735f-7. Exemption from State usury laws; applicability

(a) The provisions of the constitution of any State expressly limiting the rate or amount of interest, discount points, or other charges which may be charged, taken, received, or reserved by lenders and the provisions of any State law expressly limiting the rate or amount of interest, discount points, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, or advance which is insured under subchapter I or II of this chapter.

(b) The provisions of subsection (a) of this section shall apply to loans, mortgages, or advances made or executed in any State until the effective date (after December 21, 1979) of a provision of law of that State limiting the rate or amount of interest, discount points, or other charges on any such loan, mortgage, or advance.

(June 27, 1934, ch. 847, title V, § 529, as added Dec. 21, 1979, Pub. L. 96-153, title III, § 308, 93 Stat. 1113.)

STATE CONSTITUTIONS OR LAWS LIMITING INTEREST, DISCOUNT POINTS, OR OTHER CHARGES; EXEMPTION UNTIL CLOSE OF MARCH 31, 1980

Pub. L. 96-161, title I, § 105, Dec. 28, 1979, 93 Stat. 1234, provided that:

"(a)(1) The provisions of the constitution or law of any State expressly limiting the rate or amount of interest, discount points, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, or advance which is—

"(A) secured by a first lien on residential real property or by a first lien on stock in a residential cooperative housing corporation where the loan, mortgage, or advance is used to finance the acquisition of such stock;

"(B) made after the date of enactment of this Act [Dec. 28, 1979]; and

"(C) described in section 527(b) of the National Housing Act [section 1735f-5(b) of this title], except that the limitation described in section 527(b)(1) [section 1735f-5(b)(1) of this title] that the property must be designed principally for the occupancy of from one to four families shall not apply, the requirement contained in section 527(b)(1) [section 1735f-5(b)(1) of this title] that the loan be secured by residential real property shall not apply to a loan secured by stock in a residential cooperative housing corporation, and for the purpose of this section, the term 'lender' in section 527(b)(2)(A) of the National Housing Act [section 1735f-5(b)(2)(A) of this title] shall also be deemed to include any lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act [this chapter].

"(2) The provisions of the constitution or law of any State expressly limiting the rate or amount of interest which may be charged, taken, received, or reserved shall not apply to any deposit or account held by, or other obligation of a depository institution. As used in this paragraph, the term 'depository institution' means—

"(A) any insured bank as defined in section 3 of the Federal Deposit Insurance Act [section 1813 of this title];

"(B) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act [section 1813 of this title];

"(C) any savings bank as defined in section 3 of the Federal Deposit Insurance Act [section 1813 of this title];

"(D) any member as defined in this section;

"(E) any insured institution as defined in section 408 of the National Housing Act [section 1730a of this title]; and

"(F) any insured credit union as defined in section 101(7) of the Federal Credit Union Act [section 1752(7) of this title].

"(b) The provisions of subsection (a)(1) shall apply to loans, mortgages, and advances made in any State unless and until the State adopts a provision of law (prior to the close of March 31, 1980) limiting the rate or amount of interest, discount points, or other charges on any such loan, mortgage, or advance, except that at any time after the date of enactment of this Act [Dec. 28, 1979] any State may adopt a provision of law placing limitations on discount points or such other charges on any such loan, mortgage, or advance.

"(c) The Federal Home Loan Bank Board is authorized to issue rules and regulations and to publish interpretations governing the implementation of this section.

"(d) The provisions of subsection (a)(1) expire at the close of March 31, 1980, except that such provisions shall continue to apply to any loan, mortgage, or advance described in subsection (a)(1) for the duration of such loan, mortgage, or advance if it is made prior to such expiration or if it is made during the two-year period beginning on the date of enactment of this Act [Dec. 28, 1979] pursuant to a commitment issued prior to such expiration.

"(e) For the purpose of this Act [Pub. L. 96-161] and any amendment made by this Act [see Tables volume for classifications of Pub. L. 96-161], the term 'State' includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, and the Virgin Islands."

SUBCHAPTER VIII—ARMED SERVICES HOUSING MORTGAGE INSURANCE

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 1430, 1702, 1715f, 1715h, 1717, 1720, 1731a, 1743 of this title; title 42 sections 1594, 1594a, 1594e, 1594f; title 50 App. section 1216.

§ 1748h-1. Civilian employees of armed services

[See main edition for text of (a) to (e)]

(f) Provisions of subchapter applicable; termination date

The provisions of sections 1748, 1748a, 1748b(c), 1748b(i), 1748b(j), 1748c(a), 1748c(b), and 1748f of this title and the provisions of section 1748b(a) of this title relating to the aggregate amount of all mortgages insured under this subchapter, shall be applicable to mortgages insured under this section. No more mortgages shall be insured under this section after September 30, 1980, except pursuant to a commitment to insure before such date.

[See main edition for text of (g)]

(As amended June 30, 1977, Pub. L. 95-60, § 1(e), 91 Stat. 257; July 31, 1977, Pub. L. 95-80, § 1(e), 91 Stat. 339; Oct. 12, 1977, Pub. L. 95-128, title III, § 301(h), 91 Stat. 1131; Sept. 30, 1978, Pub. L. 95-406, § 1(h), 92 Stat. 879; Oct. 31, 1978, Pub. L. 95-557, title III, § 301(h), 92 Stat. 2096; Sept. 28, 1979, Pub. L. 96-71, § 1(h), 93 Stat. 501; Nov. 8, 1979, Pub. L. 96-105, § 1(h), 93 Stat. 794; Dec. 21, 1979, Pub. L. 96-153, title III, § 301(h), 93 Stat. 1112.)

Amendments

1979—Subsec. (f) Pub. L. 96-153 substituted "September 30, 1980" for "November 30, 1979".

Pub. L. 96-105 substituted "November 30, 1979" for "October 31, 1979".

Pub. L. 96-71 substituted "October 31, 1979" for "September 30, 1979."

1978—Subsec. (f). Pub. L. 95-557 substituted "September 30, 1979" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

1977—Subsec. (f). Pub. L. 95-128 substituted "September 30, 1978" for "September 30, 1977".

Pub. L. 95-80 substituted "September 30, 1977" for "July 31, 1977".

Pub. L. 95-60 substituted "July 31, 1977" for "June 30, 1977".

§ 1748h-2. Insurance of mortgages for defense housing for impacted areas

[See main edition for text of (a) to (j)]

(k) Aggregate amount of mortgages insured; termination date

The provisions of sections 1748, 1748a, 1748b(c), 1748b(i), 1748b(j), 1748c(a), 1748c(b), and 1748f of this title and the provisions of section 1748b(a) of this title relating to the aggregate amount of all mortgages insured under this subchapter shall be applicable to mortgages insured under this section. No more mortgages shall be insured under this section after September 30, 1980, except pursuant to a commitment to insure before such date.

(As amended June 30, 1977, Pub. L. 95-60, § 1(f), 91 Stat. 257; July 31, 1977, Pub. L. 95-80, § 1(f), 91 Stat. 339; Oct. 12, 1977, Pub. L. 95-128, title III, § 301(i), 91 Stat. 1131; Sept. 30, 1978, Pub. L. 95-406, § 1(i), 92 Stat. 879; Oct. 31, 1978, Pub. L. 95-557, title III, § 301(i), 92 Stat. 2096; Sept. 28, 1979, Pub. L. 96-71, § 1(i), 93 Stat. 501; Nov. 8, 1979, Pub. L. 96-105, § 1(i), 93 Stat. 794; Dec. 21, 1979, Pub. L. 96-153, title III, § 301(i), 93 Stat. 1112.)

Amendments

1979—Subsec. (k). Pub. L. 96-153 substituted "September 30, 1980" for "November 30, 1979".

Pub. L. 96-105 substituted "November 30, 1979" for "October 31, 1979".

Pub. L. 96-71 substituted "October 31, 1979" for "September 30, 1979."

1978—Subsec. (k). Pub. L. 95-557 substituted "September 30, 1979" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

1977—Subsec. (k). Pub. L. 95-128 substituted "September 30, 1978" for "September 30, 1977".

Pub. L. 95-80 substituted "September 30, 1977" for "July 31, 1977".

Pub. L. 95-60 substituted "July 31, 1977" for "June 30, 1977".

SUBCHAPTER IX—HOUSING FOR EDUCATIONAL INSTITUTIONS

Subchapter Referred to in Other Sections

This subchapter is referred to in section 1464 of this title; title 20 sections 1132a-6, 1132c-1, 3446.

§ 1749a. Powers and duties of Secretary

Transfer of Functions

All functions of the Office of Education, Department of Health, Education, and Welfare, were trans-

ferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

SUBCHAPTER IX-A—MORTGAGE INSURANCE FOR LAND DEVELOPMENT AND NEW COMMUNITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1464, 1702, 1715c, 1715h, 1717, 1731a, 1735f of this title; title 38 section 1804; title 42 section 5307.

§ 1749bb. Insurance of mortgages

(a) Authorization; termination date

The Secretary is authorized (1) to insure, upon such terms and conditions as he may prescribe, any first mortgage (including advances on such mortgage) in accordance with the provisions of this subchapter, and (2) to make a commitment for the insurance of such mortgage prior to the date of execution of such mortgage or prior to the date of disbursement of the mortgage proceeds. No mortgage shall be insured under this subchapter after September 30, 1980, except pursuant to a commitment to insure issued before such date.

[See main edition for text of (b) to (e)]

(As amended June 30, 1977, Pub. L. 95-60, § 1(g), 91 Stat. 257; July 31, 1977, Pub. L. 95-80, § 1(g), 91 Stat. 339; Oct. 12, 1977, Pub. L. 95-128, title III, § 301(j), 91 Stat. 1131; Sept. 30, 1978, Pub. L. 95-406, § 1(j), 92 Stat. 879; Oct. 31, 1978, Pub. L. 95-557, title III, § 301(j), 92 Stat. 2096; Sept. 28, 1979, Pub. L. 96-71, § 1(j), 93 Stat. 501; Nov. 8, 1979, Pub. L. 96-105, § 1(j), 93 Stat. 794; Dec. 21, 1979, Pub. L. 96-153, title III, § 301(j), 93 Stat. 1112.)

AMENDMENTS

1979—Subsec. (a) Pub. L. 96-153 substituted "September 30, 1980" for "November 30, 1979".

Pub. L. 96-105 substituted "November 30, 1979" for "October 31, 1979".

Pub. L. 96-71 substituted "October 31, 1979" for "September 30, 1979".

1978—Subsec. (a). Pub. L. 95-557 substituted "September 30, 1979" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

1977—Subsec. (a). Pub. L. 95-128 substituted "September 30, 1978" for "September 30, 1977".

Pub. L. 95-80 substituted "September 30, 1977" for "July 31, 1977".

Pub. L. 95-60 substituted "July 31, 1977" for "June 30, 1977".

SUBCHAPTER IX-B—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES AND MEDICAL PRACTICE FACILITIES

§ 1749aaa. Insurance of mortgages

(a) Authority of Secretary; termination date

The Secretary is authorized (1) to insure mortgages (including advances on such mortgages during construction), upon such terms and conditions as he may prescribe, in accordance with the provisions of this subchapter, and (2) to make commitments for the insuring of such mortgages prior to the date of their execution or disbursement thereon. No mortgage shall be insured under this subchapter after September 30, 1980, except pursuant to a commitment to insure issued before that date.

[See main edition for text of (b) to (f)]

(As amended June 30, 1977, Pub. L. 95-60, § 1(h), 91 Stat. 257; July 31, 1977, Pub. L. 95-80, § 1(h), 91 Stat. 339; Oct. 12, 1977, Pub. L. 95-128, title III, § 301(k), 91 Stat. 1131; Sept. 30, 1978, Pub. L. 95-406, § 1(k), 92 Stat. 879; Oct. 31, 1978, Pub. L. 95-557, title III, § 301(k), 92 Stat. 2096; Sept. 28, 1979, Pub. L. 96-71, § 1(k), 93 Stat. 501; Nov. 8, 1979, Pub. L. 96-105, § 1(k), 93 Stat. 794; Dec. 21, 1979, Pub. L. 96-153, title III, § 301(k), 93 Stat. 1112.)

AMENDMENTS

1979—Subsec. (a) Pub. L. 96-153 substituted "September 30, 1980" for "November 30, 1979".

Pub. L. 96-105 substituted "November 30, 1979" for "October 31, 1979".

Pub. L. 96-71 substituted "October 31, 1979" for "September 30, 1979".

1978—Subsec. (a). Pub. L. 95-557 substituted "September 30, 1979" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

1977—Subsec. (a). Pub. L. 95-128 substituted "September 30, 1978" for "September 30, 1977".

Pub. L. 95-80 substituted "September 30, 1977" for "July 31, 1977".

Pub. L. 95-60 substituted "July 31, 1977" for "June 30, 1977".

§ 1749aaa-3. Regulations

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER IX-C—NATIONAL INSURANCE DEVELOPMENT PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1735d of this title; title 42 sections 1452b, 1466.

§ 1749bbb. Program authority; termination date; report to the Congress

[See main edition for text of (a)]

(b)(1) The powers of the Secretary under this subchapter shall terminate on September 30, 1981, except to the extent necessary—

(A) to continue reinsurance and direct insurance in accordance with the provisions of sections 1749bbb-9(b) and 1749bbb-10a(c) of this title until September 30, 1984;

[See main edition for text of (B) and (C)]

(2) On September 30, 1981, the Secretary shall submit to the Congress, for its approval, a plan for the liquidation and termination of the reinsurance and direct insurance programs.

(As amended Apr. 30, 1977, Pub. L. 95-24, title I, § 104(a), 91 Stat. 55; Sept. 30, 1978, Pub. L. 95-406, § 5, 92 Stat. 880; Oct. 31, 1978, Pub. L. 95-557, title III, § 307(a), 92 Stat. 2097; Dec. 21, 1979, Pub. L. 96-153, title VI, § 601, 93 Stat. 1137.)

AMENDMENTS

1979—Subsec. (b) Pub. L. 96-153 substituted "September 30, 1981" for "September 30, 1980" and "September 30, 1984" for "September 30, 1983" in par. (1) and "On September 30, 1981," for "On September 30, 1981, or as soon thereafter as possible," in par. (2).

1978—Subsec. (b)(1). Pub. L. 95-557, § 307(a) (1), (2), substituted in provision preceding subpar. (A) "September 30, 1980" for "October 31, 1978" and in subpar. (A) "September 30, 1983" for "October 31, 1981".

Pub. L. 95-406, § 5(1), (2), substituted in provision preceding subpar. (A) "October 31, 1978" for "September 30, 1978" and in subpar. (A) "October 31, 1981" for "September 30, 1981".

Subsec. (b)(2). Pub. L. 95-557, § 307(a)(3), substituted "September 30, 1981" for "October 31, 1978".

Pub. L. 95-406, § 5(1), substituted "October 31, 1978" for "September 30, 1978".

1977—Subsec. (b)(1). Pub. L. 95-24, § 104(a)(1), (2), substituted in provisions preceding subpar. (A) "September 30, 1978" for "April 30, 1977" and in subpar. (A) "September 30, 1981" for "April 30, 1978".

Subsec. (b)(2). Pub. L. 95-24, § 104(a)(3), substituted "September 30, 1978" for "April 30, 1978".

1970—Subsec. (a). Pub. L. 91-609 inserted reference to part D of this subchapter.

Subsec. (b). Pub. L. 91-609 extended termination date for powers of Secretary in par. (1) from Apr. 30, 1973, to Apr. 30, 1975; provided for continuation of direct insurance and for continuation of insurance in accordance with section 1749bbb-10a(c) of this title, formerly § 1749bbb-11(c) renumbered § 1749bbb-10a(c) by Pub. L. 91-609, title VI, § 602(d), and extended continuation date from Apr. 30, 1976, to Apr. 30, 1978, in par. (1)(A); provided for claims for directly insured losses in par. (1)(B); provided for liquidation and termination of direct insurance programs in pars. (1)(C) and (2), and extended date for submission of liquidation plan from Apr. 30, 1976, to Apr. 30, 1978, in par. (2).

TRANSFER OF FUNCTIONS

All functions vested in the Secretary of Housing and Urban Development pursuant to section 1 of Pub. L. 94-13 [set out as a note under this section in the main edition] were transferred to the Director of the Federal Emergency Management Agency pursuant to Reorg. Plan No. 3 of 1978, § 202, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

PART A—STATEWIDE PLANS TO ASSURE FAIR ACCESS TO INSURANCE REQUIREMENTS

§ 1749bbb–3. FAIR plans

[*See main edition for text of* (a)]

(b) Approval and administration of plans; provisions of plans

Such plans must be approved by, and administered under the supervision of, the State insurance authority, or be authorized or required by State law, and shall be designed to make essential property insurance more readily available in, but not necessarily limited to, urban areas. Such plans may vary in detail from State to State because of local conditions, but all plans shall contain provisions that—

[*See main edition for text of* (1) *to* (8)]

(9) notice will be given to any policyholder a reasonable time prior to the cancellation or nonrenewal of any risk eligible under the plan (except in case of nonpayment of premium or evidence of incendiarism), to allow ample time for an application for new coverage to be made and a new policy to be written under the plan, and the insurer shall, in writing, explain to the policyholder the procedures for obtaining an inspection under the plan in the notice of cancellation or nonrenewal;

(10) a continuing public education program will be undertaken by the participating insurers, agents, and brokers to assure that the plan receives adequate public attention; and

(11) Notwithstanding any other provision of this section, on and after January 31, 1979, no risk within the plan shall be insured at a rate higher than the rates or advisory rates set by the principal State-licensed rating organization for essential property insurance in the voluntary market; except that this provision shall not be deemed to prohibit the application to any such risk, on a nondiscriminatory basis, of condition charges for substandard physical conditions within the control of the applicant for insurance as set by the principal State-licensed rating organization for the voluntary market.

(c) Membership of board of directors, board, etc., for each plan

At least one-third of the voting members of every board of directors, board of governors, advisory committee, and other governing or advisory board or committee for each plan described in subsection (b) of this section shall be individuals who are not employed by, or otherwise affiliated with, insurers, insurance agents, brokers, producers, or other entities of the insurance industry.

(As amended Oct. 31, 1978, Pub. L. 95-557, title III, § 307(b), (c), 92 Stat. 2097, 2098.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-557, § 307(c), added par. (11).

Subsec. (c). Pub. L. 95-557, § 307(b), added subsec. (c).

PART B—REINSURANCE COVERAGE

§ 1749bbb–8. Reinsurance agreements and premiums

[*See main edition for text of* (a) *to* (c)]

(d) Expiration date of contracts, etc.

Any contract, agreement, treaty, or other arrangement for reinsurance under this section shall be for a term expiring on April 30, 1969, and on April 30 each year thereafter, except that such term shall expire on September 30, beginning in either calendar year 1977 or 1978, as determined by the Secretary.

(As amended Apr. 30, 1977, Pub. L. 95-24, title I, § 104(b), 91 Stat. 56.)

AMENDMENTS

1977—Subsec. (d). Pub. L. 95-24 added exception that such term shall expire on Sept. 30, beginning in either calendar year 1977 or 1978, as determined by the Secretary.

SUBCHAPTER X—NATIONAL DEFENSE HOUSING INSURANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1430, 1702, 1715f, 1731a, 1743 of this title; title 10 section 2678; title 42 sections 1591, 1591a, 1591c.

CHAPTER 14—FEDERAL CREDIT UNIONS

SUBCHAPTER II—SHARE INSURANCE

Sec.

1789a. Credit unions as depositaries of public money; fiscal agents; duties [New].

SUBCHAPTER III—CENTRAL LIQUIDITY FACILITY [NEW]

1795. Congressional findings.
1795a. Definitions.
1795b. National Credit Union Administration Central Liquidity Facility; establishment; management; jurisdiction.
1795c. Membership.
(a) Credit unions serving natural persons.
(b) Credit unions serving other credit unions.
(c) Stock subscription requirements.
(d) Functions of Agent members of Facility.
(e) Withdrawal from or termination of membership.
1795d. Capital stock.
(a) Opening of books; minimum subscription.
(b) Requirements.
(c) Redemption of stock.
(d) Use of subscription amount.
(e) Restriction on advances to credit unions.
1795e. Extensions of credit.
1795f. Powers of Board.
1795g. Depositories, custodians, and fiscal agents.
1795h. Audit of financial transactions.
1795i. Annual report.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2804 of this title; title 15 sections 1607, 1681s, 1691c, 1692*l*, 1693o; title 18 section 709.

§ 1751. Short title

TRANSFER OF FUNCTIONS

The Secretary and Department of Health, Education, and Welfare was redesignated the Secretary and Department of Health and Human Services by section 3508 of title 20, Education.

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-630, title XVIII, § 1801, Nov. 10, 1978, 92 Stat. 3719, provided that: "This title [enacting subchapter III of this chapter and amending section 1757 of this title, section 709 of Title 18, Crimes and Criminal Procedure, and section 856 of Title 31, Money and Finance] may be cited as the 'National Credit Union Central Liquidity Facility Act'."

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1781, 1782, 1795f of this title.

§ 1752. Definitions

As used in this chapter—

[*See main edition for text of (1)*]

(2) the term "Chairman" means the Chairman of the National Credit Union Administration Board;

[*See main edition for text of (3)*]

(4) the term "Board" means the National Credit Union Administration Board;

(5) The terms "member account" and "account" mean a share or share certificate account of a member of a credit union of a type approved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member, and, in the case of a credit union serving predominantly low-income members (as defined by the Board), such terms (when referring to the account of a nonmember served by such credit union) mean a share or share certificate account of such nonmember which is of a type approved by the Board and evidences money or its equivalent received or held by such credit union in the usual course of business and for which it has given or is obligated to give credit to the account of such nonmember, and such terms mean share or share certificate accounts of nonmember credit unions and nonmember units of Federal, State, or local governments and political subdivisions thereof enumerated in section 1787 of this title: *Provided*, That for purposes of insured State credit unions, reference in this paragraph to "share" or "share certificate" accounts includes, as determined by the Board, the equivalent of such accounts under State law, and such term also includes a share draft account;

(6) The terms "State credit union" and "State-chartered credit union" mean a credit union organized and operated according to the laws of any State, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, which laws provide for the organization of credit unions similar in principle and objectives to Federal credit unions;

(7) The term "insured credit union" means any credit union the member accounts of which are insured in accordance with the provisions of subchapter II of this chapter, and the term "noninsured credit union" means any credit union the member accounts of which are not so insured;

(8) The term "Fund" means the National Credit Union Share Insurance Fund;

(9) The term "branch" includes any branch credit union, branch office, branch agency, additional office, or any branch place of business located in any State of the United States, the District of Columbia, the several territories, including the trust territories, and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, at which member accounts are established or money lent. The term "branch" also includes a suboffice, operated by a Federal credit union or by a credit union authorized by the Department of Defense, located on an American military installation in a foreign

country or in the trust territories of the United States; and

(10) the term "share draft account" means an account on which payment of interest may be made on a deposit with respect to which the credit union may require the member to give notice of an intended withdrawal not less than thirty days before the withdrawal is made, even though in practice such notice is not required and the member is allowed to make withdrawals by negotiable or transferable instrument for the purpose of making payments to third persons or otherwise. Such account shall consist solely of funds in which the entire beneficial interest is held by one or more individuals, or by an organization operated primarily for religious, philanthropic, charitable, educational, or other similar purpose and not for profit.

(As amended Apr. 19, 1977, Pub. L. 95-22, title III, § 308, 91 Stat. 52; Nov. 10, 1978, Pub. L. 95-630, title V, §§ 502(a), (b), 503, 92 Stat. 3681; Dec. 28, 1979, Pub. L. 96-161, title I, § 103(a), 93 Stat. 1233.)

AMENDMENTS

1979—Par. (5). Pub. L. 96-161, § 103(a)(1), added ", and such term also includes a share draft account" following "the equivalent of such accounts under State law".

Par. (10). Pub. L. 96-161, § 103(a)(2)-(4), added par. (10).

1978—Par. (2). Pub. L. 95-630, § 502(a)(1), substituted provisions defining the term "Chairman" for provisions defining the term "Administrator".

Par. (4). Pub. L. 95-630, § 502(a)(2), inserted "Administration" following "National Credit Union".

Par. (5). Pub. L. 95-630, §§ 502(b), 503(a), (b), redesignated former par. (4), defining "member account" and "account", as (5) and, as so redesignated, substituted "share or share certificate" for "share, share certificate, or share deposit" in two places; "Board" for "Administrator" wherever appearing; "share or share certificate accounts" for "those accounts"; and "enumerated in section 1787 of this title: Provided, That for purposes of State credit unions, reference in this paragraph to 'share' or 'share certificate' accounts includes, as determined by the Board, the equivalent of such accounts under State law;" for "in which payments are received by a credit union pursuant to section 1757(6) of this title;".

Pars. (6)-(8). Pub. L. 95-630, § 503(a), redesignated former pars. (5) to (7) as (6) to (8). Former par. (8) redesignated (9).

Par. (9). Pub. L. 95-630, § 503(a), (c), redesignated former par. (8) as (9) and, as so redesignated, inserted ", including the trust territories," following "several territories" and added provision that the term "branch" also includes a suboffice, operated by a Federal credit union or by a credit union authorized by the Department of Defense, located on an American military installation in a foreign country or in the trust territories of the United States.

1977—Par. (4). Pub. L. 95-22 added provision that such terms mean those accounts of nonmember credit unions and nonmember units of Federal, State, or local governments and political subdivisions thereof in which payments are received by a credit union pursuant to section 1757(6) of this title.

EFFECTIVE AND TERMINATION DATES OF 1979 AMENDMENT

Amendment by Pub. L. 96-161, amending par. (5) and enacting par. (10) of this section, effective Dec. 31, 1979, with that amendment to remain in effect until the close of Mar. 31, 1980, see section 104 of Pub. L. 96-161, set out as an Effective and Termination Dates of 1979 Amendment note under section 371a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 509 of title V of Pub. L. 95-630 provided that: "The amendments made by this title [amending sections 1752 to 1756, 1757 to 1759, 1761 to 1763, 1766, 1767, 1771, 1772a, and 1781 to 1789 of this title and sections 5108, 5314, and 5315 of Title 5, Government Organization and Employees] take effect upon the effective date of this Act [see Effective Date note under section 375b of this title], except that the functions of the Administrator of the National Credit Union Administration under the provisions of the Federal Credit Union Act [this chapter], as in effect on the date preceding the date of enactment of this title [Nov. 10, 1978], shall continue to be performed by him in accordance with such provisions until such time as all the members of the National Credit Union Administration Board, established under the amendments made by this title, take office. All rules, regulations, policies, and procedures of the Administrator in effect on the date of enactment of this title shall remain in effect until amended, superseded, or repealed."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 2113; title 26 sections 401, 501.

§ 1752a. National Credit Union Administration

(a) Establishment; management under National Credit Union Administration Board

There is established in the executive branch of the Government an independent agency to be known as the National Credit Union Administration. The Administration shall be under the management of a National Credit Union Administration Board.

(b) Membership of Board; designation of Chairman

The Board shall consist of three members, who are broadly representative of the public interest, appointed by the President, by and with the advice and consent of the Senate. In appointing the members of the Board, the President shall designate the Chairman. Not more than two members of the Board shall be members of the same political party.

(c) Term of office

The term of office of each member of the Board shall be six years, except that the terms of the two members, other than the Chairman, initially appointed shall expire one upon the expiration of two years after the date of appointment, and the other upon the expiration of four years after the date of appointment. Board members shall not be appointed to succeed themselves except the initial members appointed for less than a six-year term may be reappointed for a full six-year term and future members appointed to fill unexpired terms may be reappointed for a full six-year term. Any Board member may continue to serve as such after the expiration of said member's term until a successor has qualified.

(d) Management of Administration vested in Board; adoption of rules; quorum; report to President and Congress

The management of the Administration shall be vested in the Board. The Board shall adopt such rules as it sees fit for the transaction of its

business and shall keep permanent and complete records and minutes of its acts and proceedings. A majority of the Board shall constitute a quorum. Not later than April 1 of each calendar year, and at such other times as the Congress shall determine, the Board shall make a report to the President and to the Congress. Such a report shall summarize the operations of the Administration and set forth such information as is necessary for the Congress to review the financial program approved by the Board.

(e) Functions of Chairman

The Chairman of the Board shall be the spokesman for the Board and shall represent the Board and the National Credit Union Administration in its official relations with other branches of the Government. The Chairman shall determine each Board member's area of responsibility and shall review such assignments biennially. It shall be the Chairman's responsibility to direct the implementation of the adopted policies and regulations of the Board.

(f) Audit by General Accounting Office

The financial transactions of the Administration shall be subject to audit on a calendar year basis by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where the accounts of the Administration are kept.

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 501, 92 Stat. 3680.)

AMENDMENTS

1978—Pub. L. 95-630 generally revised section to eliminate the position of Administrator and to vest the management of the National Credit Union Administration in the National Credit Union Administration Board.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1795i of this title.

§ 1753. Federal credit union organization

Any seven or more natural persons who desire to form a Federal credit union shall subscribe before some officer competent to administer oaths an organization certificate in duplicate which shall specifically state:

[*See main edition for text of (1) to (7)*]

Such organization certificate may also contain any provisions approved by the Board for the management of the business of the association and for the conduct of its affairs and relative to the powers of its directors, officers, or stockholders.

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1754. Approval of organization certificate

The organization certificate shall be presented to the Board for approval. Before any organization certificate is approved, an appropriate investigation shall be made for the purpose of determining (1) whether the organization certificate conforms to the provisions of this chapter; (2) the general character and fitness of the subscribers thereto; and (3) the economic advisability of establishing the proposed Federal credit union. Upon approval of such organization certificate by the Board it shall be the charter of the corporation, and one of the originals thereof shall be delivered to the corporation after the payment of the fee required therefor. Upon such approval the Federal credit union shall be a body corporate and as such, subject to the limitations herein contained, shall be vested with all of the powers and charged with all of the liabilities conferred and imposed by this chapter upon corporations organized hereunder.

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator" in two places.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1755. Fees

(a) Payment by Federal credit union to Administration

In accordance with rules prescribed by the Board, each Federal credit union shall pay to the Administration an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed.

(b) Determinations of amount, assessment periods, and payment dates

The fee assessed under this section shall be determined according to a schedule, or schedules, or other method determined by the Board to be appropriate, which gives due consideration to the expenses of the Administration in carrying out its responsibilities under this chapter and to the ability of Federal credit unions to pay the fee. The Board shall, among other things, determine the periods for which the fee shall be assessed and the date or dates for the payment of the fee or increments thereof.

(c) Supervision charge exception; waiver of payment

If the annual operating fee is composed of separate charges, no supervision charge shall be

payable by a Federal credit union, and the Board may waive payment of any or all other charges comprising the fee, with respect to the year in which its charter is issued, or in which final distribution is made in its liquidation or the charter is canceled.

(d) Payment into Treasury of United States

All operating fees shall be deposited with the Treasurer of the United States for the account of the Administration and may be expended by the Board to defray the expenses incurred in carrying out the provisions of this chapter including the examination and supervision of Federal credit unions.

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 507, 92 Stat. 3682.)

AMENDMENTS

1978—Pub. L. 95-630 substituted provisions relating to the payment of an operating fee by each Federal credit union to the Board for provisions relating to the payment of costs incident to the ascertainment of whether an organization certificate should be approved and costs upon approval by the subscriber of such certificate to the Administration and payment of a supervision fee by each Federal credit union to the Administration.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1766, 1772a of this title.

§ 1756. Reports and examinations

Federal credit unions shall be under the supervision of the Board, and shall make financial reports to it as and when it may require, but at least annually. Each Federal credit union shall be subject to examination by, and for this purpose shall make its books and records accessible to, any person designated by the Board.

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 508, 92 Stat. 3683.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator" in two places and "reports to it as and when it" for "reports to him as and when he" and struck out provisions relating to the payment of an examination fee by Federal credit unions and the deposit of such fee to the credit of the special fund created by section 1755 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1757. Powers

A Federal credit union shall have succession in its corporate name during its existence and shall have power—

[*See main edition for text of (1) to (4)*]

(5) to make loans, the maturities of which shall not exceed twelve years except as otherwise provided herein, and extend lines of credit to its members, to other credit unions, and to credit union organizations and to participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members in accordance with the following:

(A) Loans to members shall be made in conformity with criteria established by the board of directors: *Provided*, That—

(i) a residential real estate loan which is made to finance the acquisition of a one-to-four-family dwelling for the principal residence of a credit union member, the sales price of which is not more than 150 per centum of the median sales price of residential real property situated in the geographical area (as determined by the board of directors) in which the property is located, and which is secured by a first lien upon such dwelling, may have a maturity not exceeding thirty years, subject to the rules and regulations of the Board;

(ii) a loan to finance the purchase of a mobile home, which shall be secured by a first lien on such mobile home to be used by the credit union member as his residence, or for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member shall have a maturity not to exceed fifteen years unless such loan is insured or guaranteed as provided in subparagraph (iii);

(iii) a loan secured by the insurance or guarantee of the Federal Government, of a State government, or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance or guarantee is provided;

(iv) a loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan which exceeds $5,000 plus pledged shares, be approved by the board of directors;

(v) loans to other members for which directors or members of the supervisory or credit committee act as guarantor or endorser be approved by the board of directors when such loans standing alone or when added to any outstanding loan or loans of the guarantor or endorser exceeds $5,000;

(vi) the rate of interest not exceed 1 per centum per month on the unpaid balance inclusive of all service charges;

(vii) the taking, receiving, reserving, or charging of a rate of interest greater than is allowed by this paragraph, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back from the credit union taking or receiving the same, in an action in the nature of an action of debt, the entire

amount of interest paid; but such action must be commenced within two years from the time the usurious collection was made;

(viii) a borrower may repay his loan, prior to maturity in whole or in part on any business day without penalty;

(ix) loans shall be paid or amortized in accordance with rules and regulations prescribed by the Board after taking into account the needs or conditions of the borrowers, the amounts and duration of the loans, the interests of the members and the credit unions, and such other factors as the Board deems relevant.

(B) A self-replenishing line of credit to a borrower may be established to a stated maximum amount on certain terms and conditions which may be different from the terms and conditions established for another borrower.

(C) Loans to other credit unions shall be approved by the board of directors.

(D) Loans to credit union organizations shall be approved by the board of directors and shall not exceed 1 per centum of the paid-in and unimpaired capital and surplus of the credit union. A credit union organization means any organization as determined by the Board, which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve.

(E) Participation loans with other credit unions, credit union organizations, or financial organizations shall be in accordance with written policies of the board of directors: *Provided,* That a credit union which originates a loan for which participation arrangements are made in accordance with this subsection shall retain an interest of at least 10 per centum of the face amount of the loan.

(6) to receive from its members, from other credit unions, from an officer, employee, or agent of those nonmember units of Federal, Indian tribal, State, or local governments and political subdivisions thereof enumerated in section 1787 of this title and in the manner so prescribed, from the Central Liquidity Facility, and from nonmembers in the case of credit unions serving predominately low-income members (as defined by the Board) payments on shares which may be issued at varying dividend rates, and payments on share certificates which may be issued at varying dividend rates and maturities, subject to such terms, rates, and conditions as may be established by the board of directors, within limitations prescribed by the Board, and to issue, deal in, and accept share drafts as orders of withdrawal against shares, subject to such terms, rates, and conditions as may be prescribed by the Board;

(7) to invest its funds (A) in loans exclusively to members; (B) in obligations of the United States of America, or securities fully guaranteed as to principal and interest thereby; (C) in accordance with rules and regulations prescribed by the Board, in loans to other credit unions in the total amount not exceeding 25 per centum of its paid-in and unimpaired capital and surplus; (D) in shares or accounts of savings and loan associations or mutual savings banks, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation; (E) in obligations issued by banks for cooperatives, Federal land banks, Federal intermediate credit banks, Federal home loan banks, the Federal Home Loan Bank Board, or any corporation designated in section 846 of title 31 as a wholly owned Government corporation; or in obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Government National Mortgage Association, or in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 1454 or 1455 of this title; or in obligations or other instruments or securities of the Student Loan Marketing Association; (F) in participation certificates evidencing beneficial interests in obligations, or in the right to receive interest and principal collections therefrom, which obligations have been subjected by one or more Government agencies to a trust or trusts for which any executive department, agency, or instrumentality of the United States (or the head thereof) has been named to act as trustee; (G) in shares or deposits of any central credit union in which such investments are specifically authorized by the board of directors of the Federal credit union making the investment; (H) in shares, share certificates, or share deposits of federally insured credit unions; (I) in the shares, stocks, or obligations of any other organization, providing services which are associated with the routine operations of credit unions, up to 1 per centum of the total paid in and unimpaired capital and surplus of the credit union with the approval of the Board: *Provided, however,* That such authority does not include the power to acquire control directly or indirectly, of another financial institution, nor invest in shares, stocks or obligations of an insurance company, trade association, liquidity facility or any other similar organization, corporation, or association, except as otherwise expressly provided by this chapter; and (J) in the capital stock of the National Credit Union Central Liquidity Facility;

(8) to make deposits in national banks and in State banks, trust companies, and mutual savings banks operating in accordance with the laws of the State in which the Federal credit union does business, and for Federal credit unions or credit unions authorized by the Department of Defense operating suboffices on American military installations in foreign countries or trust territories of the United States to maintain demand deposit accounts in banks located in those countries or trust territories, subject to such regulations as may be issued by the Board and provided such banks are correspondents of banks described in this paragraph;

(9) to borrow, in accordance with such rules and regulations as may be prescribed by the Board, from any source, in an aggregate amount not exceeding, except as authorized by the Board in carrying out the provisions of subchapter III of this chapter, 50 per centum of its paid-in and unimpaired capital and surplus: *Provided,* That any Federal credit union may discount with or sell to any Federal intermediate credit bank any eligible obligations up to the amount of its paid-in and unimpaired capital;

(10) to levy late charges, in accordance with the bylaws, for failure of members to meet promptly their obligations to the Federal credit union;

(11) to impress and enforce a lien upon the shares and dividends of any member, to the extent of any loan made to him and any dues or charges payable by him;

(12) in accordance with rules and regulations prescribed by the Board, to sell to members negotiable checks (including travelers checks) and money orders, and to cash checks and money orders for members, for a fee which does not exceed the direct and indirect costs incident to providing such service;

(13) in accordance with rules and regulations prescribed by the Board, to purchase, sell, pledge, or discount or otherwise receive or dispose of, in whole or in part, any eligible obligations (as defined by the Board) of its members and to purchase from any liquidating credit union notes made by individual members of the liquidating credit union at such prices as may be agreed upon by the board of directors of the liquidating credit union and the board of directors of the purchasing credit union, but no purchase may be made under authority of this paragraph if, upon the making of that purchase, the aggregate of the unpaid balances of notes purchased under authority of this paragraph would exceed 5 per centum of the unimpaired capital and surplus of the credit union;

(14) to sell all or a part of its assets to another credit union, to purchase all or part of the assets of another credit union and to assume the liabilities of the selling credit union and those of its members subject to regulations of the Board;

(15) to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

(As amended Apr. 19, 1977, Pub. L. 95-22, title III, §§ 302, 303, 91 Stat. 49, 51; Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), title XVIII, § 1803, 92 Stat. 3681, 3723; Dec. 21, 1979, Pub. L. 96-153, title III, § 323(d), 93 Stat. 1120; Dec. 28, 1979, Pub. L. 96-161, title I, § 103(b), 93 Stat. 1234.)

AMENDMENTS

1979—Par. (6). Pub. L. 96-161 added ", and to issue, deal in, and accept share drafts as orders of withdrawal against shares, subject to such terms, rates, and conditions as may be prescribed by the Board" following "within limitations prescribed by the Board".

Pub. L. 96-153 substituted "Federal, Indian tribal, State" for "Federal, State".

1978—Par. (5). Pub. L. 95-630, § 502(b), substituted "Board" for "Administrator" wherever appearing.

Par. (6). Pub. L. 95-630, §§ 502(b), 1803(a), inserted "from the Central Liquidity Facility," following "in the manner so prescribed," and substituted "Board" for "Administrator" in two places.

Par. (7). Pub. L. 95-630, §§ 502(b), 1803(b), substituted "Board" for "Administrator" wherever appearing and added subpar. (J).

Par. (8). Pub. L. 95-630, § 502(b), substituted "Board" for "Administrator".

Par. (9). Pub. L. 95-630, §§ 502(b), 1803(c), substituted "Board" for "Administrator" and inserted ", except as authorized by the Board in carrying out the provisions of subchapter III of this chapter," following "amount not exceeding".

Pars. (12) to (14). Pub. L. 95-630, § 502(b), substituted "Board" for "Administrator" wherever appearing.

1977—Par. (5). Pub. L. 95-22, § 302(a), among other changes, added provisions permitting Federal credit unions to establish lines of credit for their members, to raise the maximum loan maturity for most loans to twelve years, and to make loans secured by a first lien and made for the purchase of a one-to-four family residential dwelling for the principal residence of a credit union member.

Par. (6). Pub. L. 95-22, §§ 302(b), 303(a), redesignated former par. (7) as (6), and as so redesignated, substituted reference to payments on shares which may be issued at varying dividend rates and payments on share certificates which may be issued at varying dividend rates and maturities, subject to such terms, rates, and conditions as may be established by the board of directors, within limitations prescribed by the Administrator for reference to payments on shares, share certificates, or share deposits. Former par. (6), relating to the power of Federal credit unions to make loans to its own directors and to its own supervisory credit committee, was struck out.

Par. (7). Pub. L. 95-22, § 303(b), redesignated former par. (8) as (7), and as so redesignated, added subpar. (I). Former par. (7) redesignated (6).

Pars. (8) to (12). Pub. L. 95-22, § 303(c), redesignated former pars. (9) to (13) as (8) to (12), respectively. Former par. (8) redesignated (7).

Par. (13). Pub. L. 95-22, § 303(c), (d), redesignated former par. (14) as (13), and as so redesignated, inserted reference to purchase, sell, pledge, or discount or otherwise receive or dispose of, in whole or in part, any eligible obligations (as defined by the Administrator) of its members. Former par. (13) redesignated (12).

Par. (14). Pub. L. 95-22, § 303(e), added par. (14).

EFFECTIVE AND TERMINATION DATES OF 1979 AMENDMENTS

Amendment by Pub. L. 96-161, amending par. (6) of this section, effective Dec. 31, 1979, with that amendment to remain in effect until the close of Mar. 31, 1980, see section 104 of Pub. L. 96-161, set out as an Effective and Termination Dates of 1979 Amendment note under section 371a of this title.

Amendment by Pub. L. 96-153, amending par. (6) of this section, applicable only to claims arising after Dec. 21, 1979, with respect to a closing of a bank, etc., see section 323(e) of Pub. L. 96-153, set out as an Effective Date of 1979 Amendment note under section 1728 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Substitution of "Board" for "Administrator" by section 502(b) of Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

Amendment by section 1803 of Pub. L. 95-630 effective Oct. 1, 1979, see section 1806 of Pub. L. 95-630, set out as an Effective Date note under section 1795 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1761c of this title.

§ 1758. Bylaws

In order to simplify the organization of Federal credit unions the Board shall from time to time cause to be prepared a form of organization certificate and a form of bylaws consistent with this chapter, which shall be used by Federal credit union incorporators, and shall be supplied to them on request. At the time of presenting the organization certificate the incorporators shall also submit proposed bylaws to the Board for its approval.

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator" in two places, and "its approval" for "his approval".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1759. Membership

Federal credit union membership shall consist of the incorporators and such other persons and incorporated and unincorporated organizations, to the extent permitted by rules and regulations prescribed by the Board, as may be elected to membership and as such shall each, subscribe to at least one share of its stock and pay the initial installment thereon and a uniform entrance fee if required by the board of directors; except that Federal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district. Shares may be issued in joint tenancy with right of survivorship with any persons designated by the credit union member, but no joint tenant shall be permitted to vote, obtain loans, or hold office, unless he is within the field of membership and is a qualified member.

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1761. Management; board of directors, credit committee, and supervisory committee; compensation

The business affairs of a Federal credit union shall be managed by a board of not less than five directors, and a credit committee of not less than three members, all to be elected at the annual members' meeting by and from the members, and by a supervisory committee of not less than three members nor more than five members, one of whom may be a director other than the treasurer, to be appointed by the board. Any vacancy occurring in the supervisory committee shall be filled in the same manner as original appointments to such committee. All members of the board and of such committees shall hold office for such terms, respectively, as the bylaws may provide. A record of the names and addresses of the members of the board and such committees and of the officers of the credit union shall be filed with the Administration within ten days after their election or appointment. No member of the board or of either such committee shall, as such, be compensated: *Provided, however,* That reasonable health, accident, and similar insurance protection shall not be considered compensation under regulations promulgated by the Board.

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1761a. Executive officers; general manager

At their first meeting after the annual meeting of the members, the directors shall elect from their number a president, one or more vice presidents, a secretary, and a treasurer, who shall be the executive officers of the corporation. No executive officer, except the treasurer, shall be compensated as such. The offices of secretary and treasurer may be held by the same person. The duties of the officers shall be as determined by the bylaws. Before the treasurer shall enter upon his duties he shall give bond with good and sufficient surety, in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the Board, conditioned upon the faithful performance of its trust.

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1761b. Board of directors; meetings; powers and duties; executive committee; membership officers; membership application

The board of directors shall meet at least once a month and shall have the general direction and control of the affairs of the corpora-

tion. Minutes of all such meetings shall be kept. Among other things they shall act upon applications for membership; require any officer or employee having custody of or handling funds to give bond with good and sufficient surety in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the Board, and authorize the payment of the premium or premiums therefor from the funds of the Federal credit union; fill vacancies in the board and in the credit committee until successors elected at the next annual meeting have qualified; have charge of investments other than loans to members, except that the board may designate a committee of not less than two to act as an investment committee, such investment committee to have charge of making investments under rules and procedures established by the board of directors; determine from time to time the maximum number of shares and share certificates and the classes of shares and share certificates that may be held; subject to the limitations of this chapter, determine the interest rates on loans, the security, and the maximum amount which may be loaned or provided in lines of credit; subject to such regulations as may be issued by the Board, authorized an interest refund to members of record at the close of business on the last day of any dividend period in proportion to the interest paid by them during that dividend period; and provide for compensation of necessary clerical and auditing assistance requested by the supervisory committee, and of loan officers appointed by the credit committee. The board may appoint an executive committee of not less than three directors to exercise such authority as may be delegated to it subject to such conditions and limitations as may be prescribed by the board. Such executive committee or one or more membership officers appointed by the board from among the members of the credit union, other than the treasurer, an assistant treasurer, or a loan officer, may be authorized by the board to approve applications for membership under such conditions as the board may prescribe; except that such committee or membership officer so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or the board may require. If a membership application is denied, the reasons therefor shall be furnished in writing to the person whose application is denied, upon written request.

(As amended Apr. 19, 1977, Pub. L. 95-22, title III, § 309, 91 Stat. 53; Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator" in two places.

1977—Pub. L. 95-22 substituted "and share certificates and the classes of shares and share certificates that may be held" for "that may be held by an individual" and ", the security, and the maximum amount which may be loaned or provided in lines of credit" for "and the maximum amount which may be loaned with or without security to any member".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1761c. Credit committee; meetings; powers and duties; loan limits; security

The credit committee shall hold such meetings as the business of the Federal credit union may require and not less frequently than once a month to consider applications for loans and lines of credit. Reasonable notice of such meetings shall be given to all members of the committee. Except for those loans or lines of credit required to be approved by the board of directors in section 1757(5) of this title, approval of an application shall be by a majority of the entire committee and by all members of the committee who are present at the meeting at which the application is considered; except that the credit committee may appoint one or more loan officers, and delegate to him or them the power to approve loans and lines of credit. Each loan officer shall furnish to the credit committee a record of each application approved or not approved by him within seven days of the date of the filing of the application therefor. All applications not approved by a loan officer shall be acted upon by the credit committee. No individual shall have authority to disburse funds of the Federal credit union with respect to any loan or line of credit for which the application has been approved by him in his capacity as a loan officer. Not more than one member of the credit committee may be appointed as a loan officer. Applications for loans and lines of credit shall be made on forms prepared by such committee, which shall set forth the security, if any, and such other data as may be required. No loan may be made to any member if, upon the making of that loan, the member would be indebted to the Federal credit union upon loans made to him in an aggregate amount which would exceed 10 per centum of the credit union's unimpaired capital and surplus. For the purposes of this section an assignment of shares or the endorsement of a note shall be deemed security and, subject to such regulations as the Board may prescribe, insurance obtained under title I of the National Housing Act [12 U.S.C. 1702 et seq.] shall be deemed adequate security.

(As amended Apr. 19, 1977, Pub. L. 95-22, title III, § 304, 91 Stat. 51; Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator".

1977—Pub. L. 95-22 substituted "loans and lines of credit" for "loans" in three places, "Except for those loans or lines of credit required to be approved by the board of directors in section 1757(5) of this title, approval of an application shall be" for "No loan shall be made unless it is approved", "application approved" for "loan approved", "applications not approved" for "loans not approved", and "with respect to any loan or line of credit for which the application" for "for any loan which" and struck out "the purpose for which the loan is desired" following "which shall set forth", "$200 or" following "amount which would exceed",

"whichever is greater" following "capital and surplus", and provision relating to requirement that no unsecured loan be made to a member which would make the member indebted to the Federal credit union in excess of a specified amount.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1761d. Supervisory committee; powers and duties; suspension of members; passbook

The supervisory committee shall make or cause to be made an annual audit and shall submit a report of that audit to the board of directors and a summary of the report to the members at the next annual meeting of the credit union; shall make or cause to be made such supplementary audits as it deems necessary or as may be ordered by the Board, and submit reports of the supplementary audits to the board of directors; may by a unanimous vote suspend any officer of the credit union or any member of the credit committee or of the board of directors, until the next members' meeting, which shall be held not less than seven or more than fourteen days after any such suspension, at which meeting any such suspension shall be acted upon by the members; and may call by a majority vote a special meeting of the members to consider any violations of this chapter, the charter, or the bylaws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized. Any member of the supervisory committee may be suspended by a majority vote of the board of directors. The members shall decide, at a meeting held not less than seven nor more than fourteen days after any such suspension, whether the suspended committee member shall be removed from or restored to the supervisory committee. The supervisory committee shall cause the passbooks and accounts of the members to be verified with the records of the treasurer from time to time, and not less frequently than once every two years. As used in this section, the term "passbook" shall include any book, statement of account, or other record approved by the Board for use by Federal credit unions.

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1762. Reserves

(a) At the end of each accounting period the gross income shall be determined. From this amount, there shall be set aside, as a regular reserve against losses on loans and against such other losses as may be specified in regulations prescribed under this chapter, sums in accordance with the following schedule:

(1) A credit union in operation for more than four years and having assets of $500,000 or more shall set aside (A) 10 per centum of gross income until the regular reserve shall equal 4 per centum of the total of outstanding loans and risk assets, then (B) 5 per centum of gross income until the regular reserve shall equal 6 per centum of the total of outstanding loans and risk assets.

(2) A credit union in operation less than four years or having assets of less than $500,000 shall set aside (A) 10 per centum of gross income until the regular reserve shall equal 7½ per centum of the total of outstanding loans and risk assets, then (B) 5 per centum of gross income until the regular reserve shall equal 10 per centum of the total of outstanding loans and risk assets.

(3) Whenever the regular reserve falls below the stated per centum of the total of outstanding loans and risk assets, it shall be replenished by regular contributions in such amounts as may be needed to maintain the stated reserve goals.

(b) The Board may decrease the reserve requirement set forth in subsection (a) of this section when in its opinion such a decrease is necessary or desirable. The Board may also require special reserves to protect the interests of members either by regulation or for an individual credit union in any special case.

(As amended Apr. 19, 1977, Pub. L. 95-22, title III, § 305, 91 Stat. 52; Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-630 substituted "Board" for "Administrator" in two places, and "its opinion" for "his opinion".

1977—Subsec. (a). Pub. L. 95-22 substituted "At the end of each accounting period the gross income shall be determined" for "Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined", reduced the impact of existing regular reserve requirement by limiting their applicability to credit unions in operation for less than four years or having assets of less than $500,000, and added regular reserve requirements relating to credit unions in operation for more than four years and having assets of $500,000 or more.

Subsec. (b). Pub. L. 95-22 added provision permitting Administrator to decrease the reserve requirement set forth in subsec. (a) of this section when in his opinion such a decrease is necessary or desirable.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1763. Dividends

At such intervals as the board of directors may authorize, and after provision for required reserves, the board may declare, pursuant to such regulations as may be issued by the Board, a dividend to be paid at different rates on different types of shares and at different rates and maturity dates in the case of share certificates. Dividend credit may be accrued on var-

ious types of shares and share certificates as authorized by the board of directors.

(As amended Apr. 19, 1977, Pub. L. 95-22, title III, § 310, 91 Stat. 53; Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator".

1977—Pub. L. 95-22 substituted "the board may declare, pursuant to such regulations as may be issued by the Administrator, a dividend to be paid at different rates on different types of shares and at different rates and maturity dates in the case of share certificates" for "the board of directors may declare a dividend to be paid from the remaining net earnings" and "accrued on various types of shares and share certificates" for "accrued on shares" and struck out provision that such dividends shall be paid on all paid-up shares outstanding at the end of the period for which the dividend is declared and provision that shares which become fully paid up during such dividend period and are outstanding at the close of the period shall be entitled to a proportional part of such dividend.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1766. Powers of Board

(a) The Board may prescribe rules and regulations for the administration of this chapter (including, but not by way of limitation, the merger, consolidation, and dissolution of corporations organized under this chapter).

(b)(1) The Board may suspend or revoke the charter of any Federal credit union, or place the same in involuntary liquidation and appoint a liquidating agent therefor, upon its finding that the organization is bankrupt or insolvent, or has violated any of the provisions of its charter, its bylaws, this chapter, or any regulations issued thereunder.

(2) The Board, through such persons as it shall designate, may examine any Federal credit union in voluntary liquidation and, upon its finding that such voluntary liquidation is not being conducted in an orderly or efficient manner or in the best interests of its members, may terminate such voluntary liquidation and place such organization in involuntary liquidation and appoint a liquidating agent therefor.

(3) Such liquidating agent shall have power and authority, subject to the control and supervision of the Board and under such rules and regulations as the Board may prescribe, (A) to receive and take possession of the books, records, assets, and property of every description of the Federal credit union in liquidation, to sell, enforce collection of, and liquidate all such assets and property, to compound all bad or doubtful debts, and to sue in his own name or in the name of the Federal credit union in liquidation, and defend such actions as may be brought against him as liquidating agent or against the Federal credit union; (B) to receive, examine, and pass upon all claims against the Federal credit union in liquidation, including claims of members on member accounts; (C) to make distribution and payment to creditors and members as their interests may appear; and (D) to execute such documents and papers and to do such other acts and things which he may deem necessary or desirable to discharge his duties hereunder.

(4) Subject to the control and supervision of the Board and under such rules and regulations as the Board may prescribe, the liquidating agent of a Federal credit union in involuntary liquidation shall (A) cause notice to be given to creditors and members to present their claims and make legal proof thereof, which notice shall be published once a week in each of three successive weeks in a newspaper of general circulation in each county in which the Federal credit union in liquidation maintained an office or branch for the transaction of business on the date it ceased unrestricted operations; except that whenever the aggregate book value of the assets and property of a Federal credit union in involuntary liquidation is less than $1,000, unless the Board shall find that its books and records do not contain a true and accurate record of its liabilities he shall declare such Federal credit union in liquidation to be a "no publication" liquidation, and publication of notice to creditors and members shall not be required in such case; (B) from time to time make a ratable dividend on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction and, after the assets of such organization have been liquidated, make further dividends on all claims previously proved or adjudicated, and he may accept in lieu of a formal proof of claim on behalf of any creditor or member the statement of any amount due to such creditor or member as shown on the books and records of the credit union; but all claims not filed before payment of the final dividend shall be barred and claims rejected or disallowed by the liquidating agent shall be likewise barred unless suit be instituted thereon within three months after notice of rejection or disallowance; and (C) in a "no publication" liquidation, determine from all sources available to him, and within the limits of available funds of the Federal credit union, the amounts due to creditors and members, and after sixty days shall have elapsed from the date of his appointment distribute the funds of the Federal credit union to creditors and members ratably and as their interests may appear.

(5) Upon certification by the liquidating agent in the case of an involuntary liquidation, and upon such proof as shall be satisfactory to the Board in the case of a voluntary liquidation, that distribution has been made and that liquidation has been completed, as provided herein, the Board shall cancel the charter of such Federal credit union; but the corporate existence of the Federal credit union shall continue for a period of three years from the date of such cancellation of its charter, during which period the liquidating agent, or his duly appointed successor, or such persons as the Board shall designate, may act on behalf of the Federal credit union for the purpose of paying, satisfying, and discharging any existing liabilities or obligations, collecting and distributing its assets, and doing all other acts required to adjust and wind up its business and affairs, and it may sue and be sued in its corporate name.

(c) After the expiration of five years from the date of cancellation of the charter of a Federal credit union the Board may, in its discretion, destroy any or all books and records of such Federal credit union in its possession or under its control.

(d) The Board is authorized and empowered to execute any and all functions and perform any and all duties vested in them hereby, through such persons as it shall designate or employ; and it may delegate to any person or persons, including any institution operating under the general supervision of the Administration, the performance and discharge of any authority, power, or function vested in them by this chapter.

(e) All books and records of Federal credit unions shall be kept and reports shall be made in accordance with forms approved by the Board.

(f)(1) The Board is authorized to make investigations and to conduct researches and studies of the problems of persons of small means in obtaining credit at reasonable rates of interest, and of the methods and benefits of cooperative saving and lending among such persons. It is further authorized to make reports of such investigations and to publish and disseminate the same.

(2)(A) The Board is authorized to conduct directly, or to make grants to or contracts with colleges or universities, State or local educational agencies, or other appropriate public or private nonprofit organizations to conduct, programs for the training of persons engaged, or preparing to engage, in the operation of credit unions and in related consumer counseling programs, serving the poor. It is authorized to establish a program of experimental, developmental, demonstration, and pilot projects, either directly or by grants to public or private nonprofit organizations, including credit unions, or by contracts with such organizations or other private organizations, designed to promote more effective operation of credit unions, and related consumer counseling programs, serving the poor.

(B) In carrying out its authority under this paragraph, the Board shall consult with officials of the Office of Economic Opportunity and other appropriate Federal agencies responsible for the administration of projects or programs concerned with problems of the poor. The development and operation of programs and projects under this paragraph shall involve maximum feasible participation of residents of the areas and members of the groups served by such programs and projects, with community action agencies established under the provisions of the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] serving, to the extent feasible, as the means through which such participation is achieved.

(C) In order to carry out the purposes of this paragraph, there is authorized to be appropriated, as a supplement to any funds that may be expended by the Board pursuant to sections 1755 and 1756 of this title for such purposes, not to exceed $300,000 for the fiscal year ending June 30, 1970, and not to exceed $1,000,000 for the fiscal year ending June 30, 1971.

(g) Any officer or employee of the Administration is authorized, when designated for the purpose by the Board, to administer oaths and affirmations and to take affidavits and depositions touching upon any matter within the jurisdiction of the Administration.

(h) The Board is authorized, empowered, and directed to require that every person appointed or elected by any Federal credit union to any position requiring the receipt, payment, or custody of money or other personal property owned by a Federal credit union, or in its custody or control as collateral or otherwise, give bond in a corporate surety company holding a certificate of authority from the Secretary of the Treasury under sections 6 to 13 of title 6, as an acceptable surety on Federal bonds. Any such bond or bonds shall be in a form approved by the Board with a view to providing surety coverage to the Federal credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction, or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the Board may determine to be reasonably appropriate or as elsewhere required by this chapter. Any such bond or bonds shall be in such an amount in relation to the money or other personal property involved or in relation to the assets of the Federal credit union as the Board may from time to time prescribe by regulation for the purpose of requiring reasonable coverage. In lieu of individual bonds the Board may approve the use of a form of schedule or blanket bond which covers all of the officers and employees of a Federal credit union whose duties include the receipt, payment, or custody of money or other personal property for or on behalf of the Federal credit union. The Board may also approve the use of a form of excess coverage bond whereby a Federal credit union may obtain an amount of coverage in excess of the basic surety coverage.

(i) In addition to the authority conferred upon them by other sections of this chapter, the Board is authorized in carrying out its functions under this chapter—

(1) to appoint such personnel as may be necessary to enable the Administration to carry out its functions;

(2) to expend such funds, enter into such contracts with public and private organizations and persons, make such payments in advance or by way of reimbursement, and perform such other functions or acts as it may deem necessary or appropriate to carry out the provisions of this chapter; and

(3) to pay stipends, including allowances for travel to and from the place of residence, to any individual to study in a program assisted under this chapter upon a determination by the Board that assistance to such individual in such studies will be in furtherance of the purposes of this chapter.

(As amended Apr. 19, 1977, Pub. L. 95-22, title III, § 306, 91 Stat. 52; Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator" wherever appearing; and "it", "them",

and "its" for "he", "him", and "his", respectively, where appropriate.

1977—Subsec. (b)(3)(B). Pub. L. 95-22 substituted "member accounts" for "shares".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1767. Fiscal agents and depositories

Each Federal credit union organized under this chapter, when requested by the Secretary of the Treasury, shall act as fiscal agent of the United States and shall perform such services as the Secretary of the Treasury may require in connection with the collection of taxes and other obligations due the United States and the lending, borrowing, and repayment of money by the United States, including the issue, sale, redemption, or repurchase of bonds, notes, Treasury certificates of indebtedness, or other obligations of the United States; and to facilitate such purposes the Board shall furnish to the Secretary of the Treasury from time to time the names and addresses of all Federal credit unions with such other available information concerning them as may be requested by the Secretary of the Treasury. Any Federal credit union organized under this chapter, when designated for that purpose by the Secretary of the Treasury, shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary of the Treasury.

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1771. Conversion from Federal to State credit union and from State to Federal credit union

[See main edition for text of (a)]

(b)(1) A State credit union, organized under the laws of any State, the District of Columbia, the several Territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, may be converted into a Federal credit union by (A) complying with all State requirements requisite to enabling it to convert to a Federal credit union or to cease being a State credit union, (B) filing with the Administration proof of such compliance, satisfactory to the Board, and (C) filing with the Administration and organization certificate as required by this chapter.

(2) When the Board has been satisfied that all of such requirements, and all other requirements of this chapter, have been complied with, the Board shall approve the organization certificate. Upon such approval, the State credit union shall become a Federal credit union as of the date it ceases to be a State credit union. The Federal credit union shall be vested with all of the assets and shall continue responsible for all of the obligations of the State credit union to the same extent as though the conversion had not taken place.

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-630 substituted "Board" for "Administrator" in two places.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1772a. Gifts; acceptance of conditional gifts; deposit

The Board is authorized to accept gifts of money made unconditionally by will or otherwise for the carrying out of any of the functions under this chapter. A conditional gift of money made by will or otherwise for such purposes may be accepted and used in accordance with its conditions, but no such gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from income thereof unless the Board determines that supplementation of such gift from the fees it may expend pursuant to sections 1755 and 1756 of this title or from any funds appropriated pursuant to section 1766(f)(2)(C) of this title for the purpose of making such expenditure will not adversely affect the sound administration of this chapter. Any such gift shall be deposited in the Treasury of the United States for the account of the Administration and may be expended in accordance with section 1755 of this title or as provided in the preceding sentence.

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator" in two places, and "it may expend" for "he may expend".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

SUBCHAPTER II—SHARE INSURANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1795f of this title.

§ 1781. Insurance of member accounts

(a) Eligibility

The Board, as hereinafter provided, shall insure the member accounts of all Federal credit unions and it may insure the member accounts of (1) credit unions organized and operated according to the laws of any State, the District of Columbia, the several territories, including the trust territories, and possessions of the United States, the Panama Canal Zone, or

the Commonwealth of Puerto Rico, and (2) credit unions organized and operating under the jurisdiction of the Department of Defense if such credit unions are operating in compliance with the requirements of subchapter I of this chapter and regulations issued thereunder.

(b) Application; agreement

Application for insurance of member accounts shall be made immediately by each Federal credit union and may be made at any time by a State credit union or a credit union operating under the jurisdiction of the Department of Defense. Applications for such insurance shall be in such form as the Board shall provide and shall contain an agreement by the applicant—

(1) to pay the reasonable cost of such examinations as the Board may deem necessary in connection with determining the eligibility of the applicant for insurance: *Provided*, That examinations required under subchapter I of this chapter shall be so conducted that the information derived therefrom may be utilized for share insurance purposes, and examinations conducted by State regulatory agencies shall be utilized by the Board for such purposes to the maximum extent feasible;

(2) to permit and pay the reasonable cost of such examinations as in the judgment of the Board may from time to time be necessary for the protection of the fund and of other insured credit unions;

(3) to permit the Board to have access to any information or report with respect to any examination made by or for any public regulatory authority, including any commission, board, or authority having supervision of a State-chartered credit union, and furnish such additional information with respect thereto as the Board may require;

[*See main edition for text of* (4) *and* (5)]

(6) to maintain such special reserves as the Board, by regulation or in special cases, may require for protecting the interest of members or to assure that all insured credit unions maintain regular reserves which are not less than those required under subchapter I of this chapter;

(7) not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the Board except for accounts authorized by State law for State credit unions;

[*See main edition for text of* (8)]

(9) to comply with the requirements of this subchapter and of regulations prescribed by the Board pursuant thereto.

(c) Approval of application

(1) Before approving the application of any credit union for insurance of its member accounts, the Board shall consider—

[*See main edition for text of* (A) *to* (E)]

(2) The Board shall disapprove the application of any credit union for insurance of its member accounts if it finds that its reserves are inadequate, that its financial condition and policies are unsafe or unsound, that its management is unfit, that insurance of its member accounts would otherwise involve undue risk to the fund, or that its powers and purposes are inconsistent with the promotion of thrift among its members and the creation of a source of credit for provident or productive purposes.

(3) Repealed. Pub. L. 95–22, title III, § 301, Apr. 19, 1977, 91 Stat. 49.

(d) Certificate of insurance

Upon the approval of any application for insurance, the Board shall notify the applicant and shall issue to it a certificate evidencing the fact that it is, as of the date of issuance of the certificate, an insured credit union under the provisions of this subchapter.

(As amended Apr. 19, 1977, Pub. L. 95–22, title III, § 301, 91 Stat. 49; Nov. 10, 1978, Pub. L. 95–630, title V, §§ 502(b), 504, 92 Stat. 3681, 3682.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–630, §§ 502(b), 504(a), substituted "Board" for "Administrator" and "it" for "he", and inserted ", including the trust territories," following "the several territories".

Subsec. (b). Pub. L. 95–630, §§ 502(b), 504(b), substituted "Board" for "Administrator" wherever appearing and inserted in par. (7) "except for accounts authorized by State law for State credit unions" following "by the Board".

Subsec. (c). Pub. L. 95–630, § 502(b), substituted "Board" for "Administrator" wherever appearing, and in par. (2) substituted "it" for "he" preceding "finds".

Subsec. (d). Pub. L. 95–630, §§ 502(b), 504(c), struck out former subsec. (d), redesignated former subsec. (e) as (d), and, as so redesignated, substituted "Board" for "Administrator".

Subsec. (e). Pub. L. 95–630, § 504(c), redesignated subsec. (e) as (d).

1977—Subsec. (c)(3) Pub. L. 95–22 struck out subsec. (c)(3) which provided for approval by Administrator of applications of State credit unions for insurance of its member accounts where credit union meets requirements of this chapter and where in the event of liquidation of the credit union, the claims with respect to demand deposit accounts shall be subordinate to the claims with respect to member accounts.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1782. Administration of insurance fund

(a) Reports of condition

(1) Each insured credit union shall make reports of condition to the Board upon dates which shall be selected by them. Such reports of condition shall be in such form and shall contain such information as the Board may require. The reporting dates selected for reports of condition shall be the same for all insured credit unions except that when any of said reporting dates is a nonbusiness day for any credit union the preceding business day shall be its reporting date. The total amount of the member accounts of each insured credit union as of each reporting date shall be reported in such reports of condition in accordance with regulations prescribed by the Board. Each report of condition shall contain a declaration by the president, by a vice president, by the

treasurer, or by any other officer designated by the board of directors of the reporting credit union to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief. Unless such requirement is waived by the Board, the correctness of each report of condition shall be attested by the signatures of three of the officers of the reporting credit union with the declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct.

(2) The Board may call for such other reports as it may from time to time require.

(3) The Board may require reports of condition to be published in such manner, not inconsistent with any applicable law, as it may direct. Every insured credit union which willfully fails to make or publish any such report within ten days shall be subject to a penalty of not more than $100 for each day of such failure, recoverable by the Board for its use.

(4) The Board may accept any report of condition made to any commission, board, or authority having supervision of a State-chartered credit union and may furnish to any such commission, board, or authority reports of condition made to the Board.

(5) Reports required under subchapter I of this chapter shall be so prepared that they can be used for share insurance purposes. To the maximum extent feasible, the Board shall use for insurance purposes reports submitted to State regulatory agencies by State-chartered credit unions.

(b) Annual certified statements

On or before January 31 of each insurance year, each insured credit union which became insured prior to the beginning of that year shall file with the Board a certified statement showing the total amount of the member accounts in the credit union at the close of the preceding insurance year and the amount of the premium charge for insurance due to the fund for that year, as computed under subsection (c) of this section. The certified statements required to be filed with the Board pursuant to this subsection shall be in such form and shall set forth such supporting information as the Board shall require. Each such statement shall be certified by the president of the credit union, or by any officer of the credit union designated by its board of directors, that to the best of his knowledge and belief the statement is true, correct, and complete and in accordance with this subchapter and regulations issued thereunder.

(c) Insurance premiums; premium computation; rebate of premiums; rebate computation

[*See main edition for text of* (1) *to* (3)]

(4) When any loans to the fund from the Federal Government and the interest thereon have been repaid and the amount in the fund equals or exceeds the normal operating level, the Board may reduce the premium charge for insurance, but not below the amount necessary, in its judgment, to maintain the fund at the normal operating level. Any such reduction shall be effective only so long as the amount in the fund equals or exceeds the normal operating level and no loan to the fund from the Federal Government is outstanding.

(5) If in any year expenditures from the fund exceed the income of the fund, the Board may require each insured credit union to pay to the fund for such year, in addition to the regular premium charge for insurance payable under paragraph (1), (2), or (3) of this subsection, a special premium charge which shall not exceed an amount equal to the amount of the regular premium charge.

(6)(A) An insured credit union which is closed for liquidation because of insolvency or otherwise is entitled to a rebate of premiums paid by it to the fund. Rebates shall be paid in accordance with regulations prescribed by the Board, but no payment of rebate shall be made during any period in which

(i) a loan to the fund from the Federal Government is outstanding; or

(ii) the Board determines that the payment would unduly jeopardize the financial condition of the fund.

A credit union otherwise entitled to a rebate of premiums shall not lose its entitlement because payment thereof cannot at any given time be made under the limitations prescribed in clause (i) or (ii).

[*See main edition for text of* (B)]

(d) Remedy for failure to report; penalty for failure to file certified statement or pay premium; dispute as to premium charge; prohibition on distribution of assets or dividends while in default

(1) Any insured credit union which fails to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by it in connection with determining the amount of any premium charge for insurance may be compelled to make such report or to file such statement by mandatory injunction or other appropriate remedy in a suit brought for such purpose by the Board against the credit union and any officer or officers thereof. Any such suit may be brought in any court of the United States of competent jurisdiction in the district or territory in which the principal office of the credit union is located.

(2) Any insured credit union which willfully fails or refuses to file any certified statement or to pay any premium charge for insurance required under this subchapter shall be subject to a penalty of not more than $100 for each day that such violation continues, which penalty the Board may recover for its use. The provisions of this paragraph shall not be applicable in any case in which the refusal to pay the premium charge for insurance is due to a dispute between the insured credit union and the Board over the amount of the premium charge due to the fund if the credit union deposits security satisfactory to the Board for payment of the premium charge upon final determination of the issue.

(3) No insured credit union shall pay any dividends on its member accounts or distribute any of its assets while it remains in default in the payment of any premium charge for insurance

due to the fund. Any director or officer of any insured credit union who knowingly participates in the declaration or payment of any such dividend or in any such distribution shall, upon conviction, be fined not more than $1,000 or imprisoned not more than one year, or both. The provisions of this paragraph shall not be applicable in any case in which the default is due to a dispute between the credit union and the Board over the amount of the premium charge due to the fund if the credit union deposits security satisfactory to the Board for payment of the premium charge upon final determination of the issue.

(e) Recovery of unpaid premium; limitations

The Board, in a suit brought at law or in equity in any court of competent jurisdiction, shall be entitled to recover from any insured credit union the amount of any unpaid premium charge for insurance lawfully payable by the credit union to the fund, whether or not such credit union shall have made any report of condition under subsection (a) of this section or filed any certified statement required under subsection (b) of this section and whether or not suit shall have been brought to compel the credit union to make any such report or to file any such statement. No action or proceeding shall be brought for the recovery of any premium charge due to the fund, or for the recovery of any amount paid to the fund in excess of the amount due it, unless such action or proceeding shall have been brought within five years after the right accrued for which the claim is made. Where the insured credit union has made or filed with the Board a false or fraudulent certified statement with the intent to evade, in whole or in part, the payment of any premium charge, the claim shall not be deemed to have accrued until the discovery by the Board of the fact that the certified statement is false or fraudulent.

(f) Penalty for failure to comply with section; court determination of failure; remedies not exclusive

Should any Federal credit union fail to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed under subsection (b) of this section or to pay any premium charge for insurance required to be paid under any provision of this subchapter, and should the credit union fail to correct such failure within thirty days after written notice has been given by the Board to an officer of the credit union, citing this subsection and stating that the credit union has failed to make any such report or file any such statement or pay any such premium charges as required by law, all the rights, privileges, and franchises of the credit union granted to it under subchapter I of this chapter shall be thereby forfeited. Whether or not the penalty provided in this subsection has been incurred shall be determined and adjudged by any court of the United States of competent jurisdiction in a suit brought for that purpose in the district or territory in which the principal office of such credit union is located, under direction of and by the Board in its own name, before the credit union shall be declared dissolved. The remedies provided in this subsection and in subsections (d) and (e) of this section shall not be construed as limiting any other remedies against any insured credit union but shall be in addition thereto.

(g) Records

Each insured credit union shall maintain such records as will readily permit verification of the correctness of its reports of condition, certified statements, and premium charges for insurance. However, no insured credit union shall be required to retain such records for such purpose for a period in excess of five years from the date of the making of any such report, the filing of any such statement, or the payment of any premium charge, except that when there is a dispute between the insured credit union and the Board over the amount of any premium charge for insurance the credit union shall retain such records until final determination of the issue.

(h) Definitions

For the purposes of this section—

[*See main edition for text of (1) and (2)*]

(3) The term "member account" when applied to the premium charge for insurance of accounts shall not include amounts received from other federally insured credit unions in excess of the insured account limit set forth in section 1787(c)(1) of this title.

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, §§ 502(b), 505, 92 Stat. 3681, 3682.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-630, §§ 502(b), 505(a), substituted "Board" for "Administrator" wherever appearing; "them" for "him" and "such officer's knowledge" for "his knowledge" in par. (1); "reports as it" for "reports as he" in par. (2); and "it may direct" for "he may direct" and "for its use" for "for his use" in par. (3).

Subsecs. (b) to (g). Pub. L. 95-630, § 502(b), substituted "Board" for "Administrator" wherever appearing, and "its" for "his" where appropriate.

Subsec. (h)(3). Pub. L. 95-630, § 505(b), substituted "The term 'member account' when" for "The term 'members accounts' when", struck out "of Federally insured credit unions" following "of accounts", and inserted "received from other Federally insured credit unions" following "not include amounts".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1783. National Credit Union Share Insurance Fund

(a) Creation; use of fund

There is hereby created in the Treasury of the United States a National Credit Union Share Insurance Fund which shall be used by the Board as a revolving fund for carrying out the purposes of this subchapter. Money in the fund shall be available upon requisition by the Board, without fiscal year limitation, for making payments of insurance under section 1787 of this title, for providing assistance and making expenditures under section 1788 of this title in connection with the liquidation or

threatened liquidation of insured credit unions, and for such administrative and other expenses incurred in carrying out the purposes of this subchapter as it may determine to be proper.

(b) Deposit of premium charges, fees and penalties

All premium charges for insurance paid pursuant to the provisions of section 1782 of this title and all fees for examinations and all penalties collected by the Board under any provision of this subchapter shall be deposited in the National Credit Union Share Insurance Fund.

(c) Investment authorization

The Board may authorize the Secretary of the Treasury to invest and reinvest such portions of the fund as the Board may determine are not needed for current operations in any interest-bearing securities of the United States or in any securities guaranteed as to both principal and interest by the United States or in bonds or other obligations which are lawful investments for fiduciary, trust, and public funds of the United States, and the income therefrom shall constitute a part of the fund.

(d) Loans to fund, limitation and terms; interest accrual; determination of interest rate

(1) If, in the judgment of the Board, a loan to the fund is required at any time for carrying out the purposes of this subchapter, the Secretary of the Treasury shall make the loan, but loans under this paragraph shall not exceed in the aggregate $100,000,000 outstanding at any one time. Except as otherwise provided in this subsection and in subsection (e) of this section, each loan under this paragraph shall be made on such terms as may be fixed by agreement between the Board and the Secretary of the Treasury.

(2) Interest shall accrue to the Treasury on the amount of any outstanding loans made to the fund pursuant to paragraph (1) of this subsection on the basis of the average daily amount of such outstanding loans determined at the close of each fiscal year with respect to such year, and the Board shall pay the interest so accruing into the Treasury as miscellaneous receipts annually from the fund. The Secretary of the Treasury shall determine the applicable interest rate in advance by calculating the average yield to maturity (on the basis of daily closing market bid quotations during the month of September of the preceding fiscal year) on outstanding marketable public debt obligations of the United States having a maturity date of five or less years from the first day of such month of September and by adjusting such yield to the nearest one-eighth of 1 per centum.

[*See main edition for text of (3)*]

(e) Excess funds credited against loans

So long as any loans to the fund are outstanding, the Board shall from time to time, not less often than annually, determine whether the balance in the fund is in excess of the amount which, in its judgment, is needed to meet the requirements of the fund and shall pay such excess to the Secretary of the Treasury, to be credited against the loans to the fund.

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator" wherever appearing and "it" and "its" for "he" and "his", respectively, where appropriate.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1784. Examination of insured credit unions

(a) Examiners and claim agents; powers; report by examiner; jurisdiction of court

The Board shall appoint examiners who shall have power, on its behalf, to examine any insured credit union, any credit union making application for insurance of its member accounts, or any closed insured credit union whenever in the judgment of the Board an examination is necessary to determine the condition of any such credit union for insurance purposes. Each examiner shall have power to make a thorough examination of all of the affairs of the credit union and shall make a full and detailed report of the condition of the credit union to the Board. The Board in like manner shall appoint claim agents who shall have power to investigate and examine all claims for insured member accounts. Each claim agent shall have power to administer oaths and affirmations, to examine and to take and preserve testimony under oath as to any matter in respect to claims for insured accounts, and to issue subpenas and subpenas duces tecum and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States court in any territory in which the principal office of the credit union is located or in which the witness resides or carries on business. Such courts shall have jurisdiction and power to order and require compliance with any such subpena.

(b) Power of Board; jurisdiction of court

In connection with examinations of insured credit unions, the Board, or its designated representatives, shall have power to administer oaths and affirmations, to examine and to take and preserve testimony under oath as to any matter in respect of the affairs of any such credit union, and to issue subpenas and subpenas duces tecum and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States Court in any territory in which the principal office of the credit union is located or in which the witness resides or carries on business. Such courts shall have jurisdiction and power to order and require compliance with any such subpena.

(c) Court orders enforcing subpenas; immunity

In cases of refusal to obey a subpena issued to, or contumacy by, any person, the Board may invoke the aid of any court of the United States within the jurisdiction of which such hearing, examination, or investigation is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, records, or other papers. Such court may issue

an order requiring such person to appear before the Board, or before a person designated by them, there to produce records, if so ordered, or to give testimony touching the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or carries on business or wherever he may be found. No person shall be excused from attending and testifying or from producing books, records, or other papers in obedience to a subpena issued under the authority of this subchapter on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture, but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(d) Administration acceptance of State board reports; reports of Board furnished to State board

The Administration may accept any report of examination made by or to any commission, board, or authority having supervision of a State-chartered credit union and may furnish to any such commission, board, or authority reports of examination made on behalf of the Board.

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator" wherever appearing, and "them" and "its" for "him" and "his", respectively, where appropriate.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1785. Requirements governing insured credit unions

(a) Advertisement of insured status; exemptions; regulation of signs

Every insured credit union shall display at each place of business maintained by it a sign or signs indicating that its member accounts are insured by the Board and shall include in all of its advertisements a statement to the effect that its member accounts are insured by the Board. The Board may exempt from this requirement advertisements which do not relate to member accounts or advertisements in which it is impractical to include such a statement. The Board shall prescribe by regulation the forms of such signs, the manner of display, the substance of any such statement, and the manner of use.

(b) Restrictions

(1) Except with the prior written approval of the Board, no insured credit union shall—

[See main edition for text of (A) to (D)]

(2) Except with the prior written approval of the Board, no insured credit union shall merge or consolidate with any other insured credit union or, either directly or indirectly, acquire the assets of, or assume liability to pay any member accounts in, any other insured credit union.

(c) Considerations for waiver or enforcement of restrictions

In granting or withholding approval or consent under subsection (b) of this section, the Board shall consider—

[See main edition for text of (1) to (6)]

(d) Restrictions on persons convicted of any criminal offense involving dishonesty or breach of trust; penalty

Except with the written consent of the Board, no person shall serve as a director, officer, committee member, or employee of an insured credit union who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or a breach of trust. For each willful violation of this prohibition, the credit union involved shall be subject to a penalty of not more than $100 for each day this prohibition is violated, which the Board may recover for its use.

(e) Security standards; reports; penalty

(1) The Board shall promulgate rules establishing minimum standards with which each insured credit union must comply with respect to the installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts.

[See main edition for text of (2) and (3)]

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator" wherever appearing, and "its" for "his" where appropriate.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1786. Termination of insured credit union status; cease and desist orders; removal or suspension from office; procedure

(a) Termination of insurance

(1) Any insured credit union other than a Federal credit union may, upon not less than ninety days' written notice to the Board and upon the affirmative vote of a majority of its members within one year prior to the giving of such notice, terminate its status as an insured credit union.

(2) Any insured credit union, other than a Federal credit union, which has obtained a new certificate of insurance from a corporation au-

thorized and duly licensed to insure member accounts may upon not less than ninety days' written notice to the Board convert from status as an insured credit union under this chapter: *Provided,* That at the time of giving notice to the Board the provisions of paragraph (b)(1) of this section are not being invoked against the credit union.

(b) Unsound condition of credit union; notice to correct condition; hearing; judicial review

(1) Whenever, in the opinion of the Board, any insured credit union is engaging or has engaged in unsafe or unsound practices in conducting the business of such credit union, or is in an unsafe or unsound condition to continue operations as an insured credit union, or is violating or has violated an applicable law, rule, regulation, order, or any condition imposed in writing by the Board in connection with the granting of any application or other request by the credit union, or is violating or has violated any written agreement entered into with the Board, the Board shall serve upon the credit union a statement with respect to such practices or conditions or violations for the purpose of securing the correction thereof. In the case of an insured State-chartered credit union, the Board shall send a copy of such statement to the commission, board, or authority, if any, having supervision of such credit union. Unless such correction shall be made within one hundred and twenty days after service of such statement, or within such shorter period of not less than twenty days after such service as the Board shall require in any case where it determines that the insurance risk with respect to such credit union could be unduly jeopardized by further delay in the correction of such practices or conditions or violations, or as the commission, board, or authority having supervision of such credit union, if any, shall require in the case of an insured State-chartered credit union, the Board, if it shall determine to proceed further, shall give to the credit union not less than thirty days' written notice of its intention to terminate the status of the credit union as an insured credit union. Such notice shall contain a statement of the facts constituting the alleged unsafe and unsound practices or conditions or violations and shall fix a time and place for a hearing thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Board at the request of the credit union. Unless the credit union shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured credit union. In the event of such consent, or if upon the record made at any such hearing the Board shall find that any unsafe or unsound practice or condition or violation specified in the notice has been established and has not been corrected within the time above-prescribed in which to make such correction, the Board may issue and serve upon the credit union an order terminating its status as an insured credit union on a date subsequent to the date of such finding and subsequent to the expiration of the time specified in the notice.

(2) Any credit union whose insured status has been terminated by order of the Board under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (i) of this section.

(c) Notice to members of termination of insured status

In the event of the termination of a credit union's status as an insured credit union as provided under subsection (a)(1) or (b) of this section, the credit union shall give prompt and reasonable notice to all of its members whose accounts are insured that it has ceased to be an insured credit union. It may include in such notice a statement of the fact that member accounts insured on the effective date of such termination, to the extent not withdrawn, remain insured for one year from the date of such termination, but it shall not further represent itself in any manner as an insured credit union. In the event of failure to give the notice as herein provided to members whose accounts are insured, the Board is authorized to give reasonable notice.

(d) Continuation of insurance for one year; approval of conversion of status; procedure subsequent to approval; reduction of premium charges

(1) After the termination of the insured status of any credit union as provided under subsection (a) or (b) of this section, insurance of its member accounts to the extent that they were insured on the effective date of such termination, less any amounts thereafter withdrawn which reduce the accounts below the amount covered by insurance on the effective date of such termination, shall continue for a period of one year, but no shares issued by the credit union or deposits made after the date of such termination shall be insured by the Board. The credit union shall continue to pay premiums to the Board during such period as in the case of an insured credit union and the Board shall have the right to examine such credit union from time to time during the period during which such insurance continues. Such credit union shall, in all other respects, be subject to the duties and obligations of an insured credit union for the period of one year from the date of such termination. In the event that such credit union shall be closed for liquidation within such period of one year, the Board shall have the same powers and rights with respect to such credit union as in the case of an insured credit union.

[*See main edition for text of* (2) *and* (3)]

(e) Opinion of Board as to unsound condition of credit union; notice of charges; hearing; order to cease and desist; judicial review

(1) If, in the opinion of the Board, any insured credit union, credit union which has insured accounts, or any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such a credit union is engaging or has engaged, or the Board has reasonable cause to believe that the credit union or any director, officer, committee member, employee, agent, or other

person participating in the conduct of the affairs of such credit union is about to engage, in an unsafe or unsound practice in conducting the business of such credit union, or is violating or has violated, or the Board has reasonable cause to believe that the credit union or any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Board in connection with the granting of any application or other request by the credit union or any written agreement entered into with the Board, the Board may issue and serve upon the credit union or such director, officer, committee member, employee, agent, or other person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the credit union or the director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Board at the request of any party so served. Unless the party or parties so served shall appear at the hearing by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the Board shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Board may issue and serve upon the credit union or the director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the credit union or its directors, officers, committee members, employees, agents, and other persons participating in the conduct of the affairs of such credit union to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the credit union or other person concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

(f) Temporary cease and desist order; injunctive procedure

(1) Whenever the Board shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the credit union or any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union pursuant to paragraph (1) of subsection (e) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the credit union, or is likely to seriously weaken the condition of the credit union or otherwise seriously prejudice the interests of its insured members prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (e) of this section, the Board may issue a temporary order requiring the credit union or such director, officer, committee member, employee, agents, or other person to cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order shall become effective upon service upon the credit union or such director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Administration shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the credit union or such director, officer, committee member, employee, agent, or other person, until the effective date of such order.

(2) Within ten days after the credit union concerned or any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union has been served with a temporary cease-and-desist order, the credit union or such director, officer, committee member, employee, agent, or other person may apply to the United States district court for the judicial district in which the home office of the credit union is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the credit union or such director, officer, committee member, employee, agent, or other person under paragraph (1) of subsection (e) of this section, and such court shall have jurisdiction to issue such injunction.

(3) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order, the Board may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the principal office of the credit union is located for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

(g) Removal of director, officer, or committee member; notice; hearing; judicial review

(1) Whenever, in the opinion of the Board, any director, officer, or committee member of an insured credit union has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the credit union, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director, officer, or committee member and the Board determines that the credit union has suffered or will probably suffer substantial financial loss or other damage or that the interests of its insured members could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, the Board may serve upon such director, officer, or committee member a written notice of its intention to remove him from office.

(2) Whenever, in the opinion of the Board, any director, officer, or committee member of an insured credit union, by conduct or practice with respect to another insured credit union or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty or unfitness to continue as a director, officer, or committee member, and, whenever, in the opinion of the Board, any other person participating in the conduct of the affairs of an insured credit union, by conduct or practice with respect to such credit union or other insured credit union or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty or unfitness to participate in the conduct of the affairs of such insured credit union, the Board may serve upon such director, officer, committee member, or other person a written notice of its intention to remove him from office and/or to prohibit his further participation in any manner in the conduct of the affairs of such credit union.

(3) In respect to any director, committee member, or officer of an insured credit union or any other person referred to in paragraph (1) or (2) of this subsection, the Board may, if it deems it necessary for the protection of the credit union or the interests of its members, by written notice to such effect served upon such director, committee member, officer, or other person, suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the credit union. Such suspension or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by paragraph (5) of this subsection, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraph (1) or (2) of this subsection and until such time as the Board shall dismiss the charges specified in such notice, or, if an order of removal and prohibition is issued against the director, committee member, or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the credit union of which he is a director, committee member, or officer or in the conduct of whose affairs he has participated.

(4) A notice of intention to remove a director, committee member, officer, or other person from office or to prohibit his participation in the conduct of the affairs of an insured credit union, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Board at the request of (A) such director, committee member, or officer or other person, and for good cause shown, or (B) the Attorney General of the United States. Unless such director, committee member, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Board shall find that any of the grounds specified in such notice have been established, the Board may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the credit union, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such credit union and the director, committee member, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

[*See main edition for text of* (5)]

(h) Suspension or removal of director, officer, or committee member charged with felony

(1) Whenever any director, committee member, or officer of an insured credit union, or other person participating in the conduct of the affairs of such credit union, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Board may, if continued service or participation by the individual may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, by written notice served upon such director, committee member, officer, or other person suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the credit union. A copy of such notice shall also be served upon the credit union. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Board. In the event that a judgment of conviction with respect to such crime is entered against such di-

rector, committee member, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Board may, if continued service or participation by the individual may pose a threat to the interests of the credit union's depositors or may threaten to impair public confidence in the credit union, issue and serve upon such director, committee member, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the Board. A copy of such order shall also be served upon such credit union, whereupon such director, committee member, or officer shall cease to be a director, committee member, or officer of such credit union. A finding of not guilty or other disposition of the charge shall not preclude the Board from thereafter instituting proceedings to remove such director, committee member, officer, or other person from office or to prohibit further participation in the affairs of the credit union, pursuant to subsection (g) of this section. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the Board.

(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a Federal credit union less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a Federal credit union are suspended pursuant to this section, the Board shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the credit union and their respective successors have been elected by the members at an annual or special meeting and have taken office. Directors appointed temporarily by the Board shall, within thirty days following their appointment, call a special meeting for the election of new directors, unless during the thirty-day period (A) the regular annual meeting is scheduled, or (B) the suspensions giving rise to the appointment of temporary directors are terminated.

(3) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the director, committee member, officer, or other person concerned may request in writing an opportunity to appear before the Board to show that the continued service to or participation in the conduct of the affairs of the credit union by such individual does not, or is not likely to, pose a threat to the interests of the credit union's members or threaten to impair public confidence in the credit union. Upon receipt of any such request, the Board shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of the concerned director, committee member, officer, or other person) and place at which the director, committee member, officer, or other person may appear, personally or through counsel, before the Board or its designee to submit written materials (or, at the discretion of the Board, oral testimony) and oral argument. Within sixty days of such hearing, the Board shall notify the director, committee member, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the credit union will be continued, terminated or otherwise modified, or whether the order removing said director, committee member, officer, or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the credit union will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Board's decision, if adverse to the director, committee member, officer, or other person. The Board is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(i) Jurisdiction of hearing; procedure; judicial review

(1) Any hearing provided for in this section (other than the hearing provided for in subsection (h)(3) of this section) shall be held in the Federal judicial district or in the territory in which the principal office of the credit union is located, unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5. Such hearing shall be private unless the Board, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After such hearing, and within ninety days after the Board has notified the parties that the case has been submitted to them for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (i). Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the Board may at any time, upon such notice and in such manner as it may deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Board may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to the proceeding, or any person required by an order issued under this section to cease and desist from any of the practices or violations stated therein, may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the credit union or the director, officer, committee member, or other person concerned or an order issued under subsection (h)(1) of this section)

by filing in the court of appeals of the United States for the circuit in which the principal office of the credit union is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Board be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall, except as provided in the last sentence of said paragraph (1), be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Board. Review of such proceedings shall be had as provided in chapter 7 of title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Board.

(j) Jurisdiction and enforcement; penalty

(1) The Board may in its discretion apply to the United States district court, or the United States court of any territory within the jurisdiction of which the principal office of the credit union is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such courts shall have jurisdiction and power to order and require compliance therewith. However, except as otherwise provided in this section, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section or to review, modify, suspend, terminate, or set aside any such notice or order.

(2)(A) Any insured credit union which violates or any officer, director, committee member, employee, agent, or other person participating in the conduct of the affairs of such a credit union who violates the terms of any order which has become final and was issued pursuant to subsection (e) or (f) of this section, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Board by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(B) In determining the amount of the penalty, the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the insured credit union or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(C) The insured credit union or person charged shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The Board's determination shall be made by final order which may be reviewed only as provided in subparagraph (D). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(D) Any insured credit union or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the insured credit union is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Board. The Board shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28. The findings of the Board shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5.

(E) If any insured credit union or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Board, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(F) The Board shall promulgate regulations establishing procedures necessary to implement this paragraph.

(G) All penalties collected under authority of this paragraph shall be covered into the Treasury of the United States.

(k) Penalty for any removed director, officer, or committee member who participates in credit union business

Any director, officer, or committee member, or former director, officer, or committee member, of an insured credit union or of a credit union any of the member accounts of which are insured, or any other person against whom there is outstanding and effective and notice or order (which is an order which has become final) served upon such director, officer, committee member, or other person under subsections (g)(3), (g)(4), or (h) of this section and who (i) participates in any manner in the conduct of the affairs of the credit union involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such credit union, or (ii) without the prior written approval of the Board votes for a director, serves or acts as a director, officer, committee member, or employee of any credit union, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.

(*l*) Definitions

As used in this section (1) the terms "cease-and-desist order which has become final" and "order which has become final" means a cease-and-desist order, or an order issued by the Board with the consent of the credit union or the director, officer, committee member, or other person concerned, or with respect to which no petition for review of the action of the Board has been filed and perfected in a court of appeals as specified in paragraph (2) of subsection (i) of this section, or with respect to which the action of the court in which said petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in said paragraph, or an order issued under subsection (h) of this section, and (2) the term "violation" includes, without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(m) Notice or order to State board supervising State-chartered credit union

Any service required or authorized to be made by the Board under this section may be made by registered mail or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide. Copies of any notice or order served by the Board upon any State-chartered credit union or any director, officer, or committee member thereof or other person participating in the conduct of its affairs, pursuant to the provisions of this section, shall also be sent to the commission, board, or authority, if any, having supervision of such credit union.

(n) Notice of proceedings to State board supervising State-chartered credit union; effect of corrective action by State board; attack on validity of notice or order

In connection with any proceeding under subsection (e), (f)(1), or (g) of this section involving an insured State-chartered credit union or any director, officer, committee member, or other person participating in the conduct of its affairs, the Board shall provide the commission, board, or authority, if any, having supervision of such credit union, with notice of its intent to institute such a proceeding and the grounds thereof. Unless within such time as the Board deems appropriate in the light of the circumstances of the case (which time must be specified in the notice prescribed in the preceding sentence) satisfactory corrective action is effectuated by action of such commission, board, or authority, the Board may proceed as provided in this section. No credit union or other party who is the subject of any notice or order issued by the Board under this section shall have standing to raise the requirements of this subsection as ground for attacking the validity of any such notice or order.

(o) Proceedings; powers of Board; court enforcement of subpenas; witness fees; expenses and attorneys' fees

In the course of or in connection with any proceeding under this section, the Board, or any designated representative thereof, including any person designated to conduct any hearing under this section, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum, and the Board is empowered to make rules and regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceedings instituted under this section by an insured credit union or a director, officer, or committee member thereof may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper, and such expenses and fees shall be paid by the credit union or from its assets.

(As amended Apr. 19, 1977, Pub. L. 95-22, title III, § 307, 91 Stat. 52; Nov. 10, 1978, Pub. L. 95-630, title I, §§ 107(a)(4), (c)(4), (d)(4), (e)(4), 111(d), title V, § 502(b), 92 Stat. 3652, 3656, 3659, 3663, 3670, 3681.)

AMENDMENTS

1978—Subsecs. (a) to (d). Pub. L. 95-630, § 502(b), substituted "Board" for "Administrator" wherever appearing, and "it" and "its" for "he" and "his", respectively, where appropriate.

Subsec. (e). Pub. L. 95-630, §§ 107(a)(4), 502(b), substituted "Board" for "Administrator" wherever appearing, and in par. (1) extended coverage of provisions to include directors, officers, committee members, employees, agents, or other persons participating in the conduct of the affairs of any insured credit union or credit union which has insured accounts.

Subsec. (f). Pub. L. 95-630, §§ 107(c)(4), 502(b), substituted "Board" for "Administrator" wherever appearing, added references to any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of the credit union, and inserted in par. (1) "prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (e) of this section" following "its insured members" and "and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings" following "violation or practice".

Subsec. (g). Pub. L. 95-630, §§ 107(d)(4), 502(b), substituted "Board" for "Administrator" wherever appearing, in pars. (1), (2) "its" for "his", in par. (3) "it" for "he", "or prohibit him" for "and/or prohibit him", "suspension or prohibition" for "suspension and/or prohibition", and "removal and prohibition" for "removal and/or prohibition", and in par. (4) "or to prohibit" for "and/or to prohibit", "removal or prohibi-

tion" for "removal and/or prohibition", and "or prohibition" for "and/or prohibition".

Subsec. (h). Pub. L. 95-630, §§ 111(d)(1), 502(b), among other changes, substituted "Board" for "Administrator" wherever appearing, in par. (1) substituted "Crime" for "felony" in two places and "subsection (g) of this section" for "paragraph (1) or (2) of subsection (g) of this section", inserted "which is punishable by imprisonment for a term exceeding one year under State or Federal law" following "or breach of trust" and ", if continued service or participation by the individual may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union" following "the Board may" in two places, and added provision that any notice of suspension or order of removal issued under this paragraph remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the Board, and added par. (3).

Subsec. (i). Pub. L. 95-630, §§ 111(d)(2), (3), 502(b), substituted "Board" for "Administrator" wherever appearing, in par. (1) substituted "its" for "his" and "it" for "he" and inserted "(other than the hearing provided for in subsection (h)(3) of this section)" following "provided for in this section", and in par. (2) substituted "subsection (h)(1)" for "subsection (h)".

Subsec. (j). Pub. L. 95-630, §§ 107(e)(4), 502(b), designated existing provisions as par. (1), added par. (2), and substituted "Board" for "Administrator" wherever appearing and "its" for "his" in par. (1).

Subsecs. (k)-(o). Pub. L. 95-630, § 502(b), substituted "Board" for "Administrator" wherever appearing.

1977—Subsec. (g)(1). Pub. L. 95-22, § 307(a), struck out "and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director, officer, or committee member" following "or breach of fiduciary duty".

Subsec. (g)(2). Pub. L. 95-22, § 307(b), substituted "dishonesty or unfitness" for "dishonesty and unfitness" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by sections 107(a)(4), (c)(4), (d)(4), and 111(d)(1)-(3) of Pub. L. 95-630 effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

Amendment of subsec. (j) by section 107(e)(4) of Pub. L. 95-630, relating to imposition of civil penalties, applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 93 of this title.

Substitution of "Board" for "Administrator" by section 502(b) of Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1787. Payment of insurance

(a) Liquidation by Board; notice to claimants; subrogation; dividend payments; bond; appointment of agent; fees to be fixed by Board

(1) Upon its finding that a Federal credit union insured under this subchapter is bankrupt or insolvent, the Board shall close such credit union for liquidation and appoint himself[1] liquidating agent therefor.

(2) Notwithstanding any other provisions of law, it shall be the duty of the Board as such liquidating agent to cause notice to be given, by advertisement in such newspapers as it may direct, to all persons having claims against such closed credit union, to present their claims within four months from the date such advertisement first appeared; to realize upon the assets of such closed credit union, having due regard to the condition of credit in the locality; and to wind up the affairs of such closed credit union in conformity with the provisions of law relating to the liquidation of bankrupt or insolvent Federal credit unions, except as herein otherwise provided. The Board as such liquidating agent shall pay to himself[1] for its own account such portion of the amounts realized from such liquidation as it shall be entitled to receive on account of its subrogation to the claims of members, and it shall pay to members and other creditors the net amounts available for distribution to them. The Board as such liquidating agent, however, may, in its discretion, pay dividends on proved claims at any time after the expiration of the period of advertisement made pursuant to the first sentence of this paragraph, and no liability shall attach to the Board himself[1] for as such liquidating agent by reason of any such payment for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(3) Notwithstanding any other provision of law, the Board as liquidating agent of a closed Federal credit union insured under this subchapter shall not be required to furnish bond and shall have the right to appoint an agent or agents to assist them in its duties as such liquidating agent. All fees, compensation, and expenses of liquidation and administration thereof shall be fixed by the Board and may be paid by them out of funds coming into its possession as such liquidating agent.

(b) Board as liquidating agent of State-chartered credit unions

Whenever any insured State-chartered credit union shall have been closed by action of its board of directors or by the commission, board, or authority having supervision of such credit union, as the case may be, or by a court of competent jurisdiction, on account of bankruptcy or insolvency, the Board shall accept appointment as liquidating agent therefor, if such appointment is tendered by the commission, board, or authority having supervision of such credit union, or by a court of competent jurisdiction, and is authorized or permitted by State law. With respect to any such State-chartered credit union, the Board as such liquidating agent shall possess all the rights, powers, and privileges granted by State law to a liquidating agent of a State-chartered credit union. For the purposes of this subsection, the term "liquidating agent" includes a liquidating agent, receiver, conservator, commission, person, or other agency charged by law with the duty of winding up the affairs of a credit union.

(c) Payment of insured accounts; extent of insurance coverage; proof of claims; insurance of public funds; insurance regarding pension and profit-sharing plans

(1) Whenever an insured credit union shall have been closed for liquidation on account of bankruptcy or insolvency, payment of the insured accounts in such credit union shall be made by the Board as soon as possible, subject

[1] So in original. Probably should be "itself".

to the provisions of subsection (d) of this section. Subject to the provisions of paragraph (2), for the purposes of this subsection, the term "insured account" means the total amount of the account in the member's name (after deducting offsets) less any part thereof which is in excess of $40,000. Such amount shall be determined according to such regulations as the Board may prescribe, and, in determining the amount due to any member, there shall be added together all accounts in the credit union maintained by him for his own benefit either in his own name or in the names of others. The Board may define, with such classifications and exceptions as it may prescribe, the extent of the insurance coverage provided for member accounts, including member accounts in the name of a minor, in trust, or in joint tenancy. The Board, in its discretion, may require proof of claims to be filed before paying the insured accounts, and in any case where it is not satisfied as to the validity of a claim for an insured account, it may require the final determination of a court of competent jurisdiction before paying such claim.

(2)(A) Notwithstanding any limitation in this chapter or in any other provision of law relating to the amount of insurance available for the account of any one depositor or member, in the case of a depositor or member who is—

[*See main edition for text of* (i) *and* (ii)]

(iii) an officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this subchapter in the District of Columbia;

(iv) an officer, employee, or agent of the Commonwealth of Puerto Rico, of the Panama Canal Zone, or of any territory or possession of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this subchapter in the Commonwealth of Puerto Rico, the Panama Canal Zone, or any such territory or possession, respectively; or

(v) an officer, employee, or agent of any Indian tribe (as defined in section 1452(c) of title 25) or agency thereof having official custody of tribal funds and lawfully investing the same in a credit union insured in accordance with this title;

his account shall be insured in an amount not to exceed $100,000 per account.

(B) The Board may limit the aggregate amount of funds that may be invested or deposited in any credit union insured in accordance with this subchapter by any depositor or member referred to in subparagraph (A) on the basis of the size of any such credit union in terms of its assets.

(3) Notwithstanding any limitation in this subchapter or in any other provision of law relating to the amount of insurance available for the account of any one depositor or member, funds invested in a credit union insured in accordance with this subchapter pursuant to a pension or profit-sharing plan described in section 401(d) of title 26, and funds invested in such an insured credit union in the form of individual retirement accounts as described in section 408(a) of title 26, shall be insured in the amount of $100,000 per account. As to any plan qualifying under section 401(d) or section 408(a) of title 26, the term "per account" means the present vested and ascertainable interest of each beneficiary under the plan, excluding any remainder interest created by, or as a result of, the plan.

(d) Subrogation

In the case of a closed Federal credit union, the Board, upon the payment to any member as provided in subsection (c) of this section, shall be subrogated to all rights of the member against such closed credit union to the extent of such payment. In the case of any other closed insured credit union, the Board shall not make any payment to any member until the right of the Board to be subrogated to the rights of such member on the same basis as provided in the case of a closed Federal credit union shall have been recognized either by express provision of State law, by allowance of claims by the commission, board, or authority having supervision of such credit union, by assignment of claims by members, or by any other effective method. In the case of any closed insured credit union, such subrogation shall include the right on the part of the Board to receive the same dividends from the proceeds of the assets of such closed credit union as would have been payable to the member on a claim for the insured account, but such member shall retain his claim for any uninsured portion of his account. The rights of members and other creditors of any State-chartered credit union shall be determined in accordance with the applicable provisions of State law.

(e) Payment; discharge of liability

Payment of an insured account to any person by the Board shall discharge the Board to the same extent that payment to such person by the closed insured credit union would have discharged it from liability for the insured account.

(f) Undisclosed names

Except as otherwise prescribed by the Board, the Board shall not be required to recognize as the owner of any portion of an account appearing on the records of the closed credit union under a name other than that of the claimant any person whose name or interest as such owner is not disclosed on the records of such closed credit union as part owner of such account, if such recognition would increase the aggregate amount of the insured accounts in such closed credit union.

(g) Withholding of payment due to liability of credit union member

The Board may withhold payment of such portion of the insured account of any member of a closed credit union as may be required to provide for the payment of any direct or indirect liability of such member to the closed credit union or its liquidating agent, which is

not offset against a claim due from such credit union, pending the determination and payment of such liability by such member or any other person liable therefor.

(h) Unclaimed insured accounts; limitations

If, after the Board shall have given at least four months' notice to the member by mailing a copy thereof to his last-known address appearing on the records of the closed credit union, any member of the closed credit union shall fail to claim his insured account from the Board within 18 months after the appointment of the liquidating agent for the closed credit union, all rights of the member against the Board with respect to the insured accounts shall be barred, and all rights of the member against the closed credit union, or the estate to which the Board may have become subrogated, shall thereupon revert to the member.

(i) Sale of assets; security for loans; approval of court; agreements affecting interest of Board in any asset acquired by them

(1) Liquidating agents of insured credit unions closed for liquidation on account of bankruptcy or insolvency may offer the assets of such credit unions for sale to the Board or as security for loans from the Board, upon receiving permission from the commission, board, or authority having supervision of such credit union, in the case of an insured State-chartered credit union, in accordance with express provisions of State law. The proceeds of every such sale or loan shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such credit unions. The Board, in its discretion, may make loans on the security of or may purchase and liquidate or sell any part of the assets of an insured credit union closed for liquidation on account of bankruptcy or insolvency, but in any case in which the Board is acting as liquidating agent of a closed insured credit union, no such loan or purchase shall be made without the approval of a court of competent jurisdiction.

(2) No agreement which tends to diminish or defeat the right, title, or interest of the Board in any asset acquired by them under this subsection, either as security for a loan or by purchase, shall be valid against the Board unless such agreement—

[See main edition for text of (A) to (D)]

(As amended Nov. 10, 1978, Pub. L. 95–630, title V, § 502(b), title XIV, § 1401(c), 92 Stat. 3681, 3712; Dec. 21, 1979, Pub. L. 96–153, title III, § 323(c), 93 Stat. 1120.)

AMENDMENTS

1979—Subsec. (c)(2)(A)(v). Pub. L. 96–153 added subsec. (c)(2)(A)(v).

1978—Subsecs. (a), (b). Pub. L. 95–630, § 502(b), substituted "Board" for "Administrator" wherever appearing, and "it", "them", and "its" for "he", "him", and "his", respectively, where appropriate.

Subsec. (c). Pub. L. 95–630, §§ 502(b), 1401(c), substituted in pars. (1) and (2) "Board" for "Administrator" wherever appearing and "it" and "its" for "he" and "his", respectively, where appropriate, and added par. (3).

Subsecs. (d) to (i). Pub. L. 95–630, § 502(b), substituted "Board" for "Administrator" wherever appearing, and "them" and "its" for "him" and "his", respectively, where appropriate.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 applicable only to claims arising after Dec. 21, 1979, with respect to a closing of a bank, etc., see section 323(e) of Pub. L. 96–153, set out as an Effective Date of 1979 Amendment note under section 1728 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Substitution of "Board" for "Administrator" by section 502(b) of Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

Addition of subsec. (c)(3) of this section by Pub. L. 95–630 effective Nov. 10, 1978, see section 1402 of Pub. L. 95–630, set out as an Effective Date of 1978 Amendment note under section 1728 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1752, 1757, 1782, 1783 of this title.

§ 1788. Special assistance to avoid liquidation

(a) Loans; purchase of assets; accounts; agreements affecting interest of Board in any asset acquired by them

(1) In order to reopen a closed insured credit union or in order to prevent the closing of an insured credit union which the Board has determined is in danger of closing or in order to assist in the voluntary liquidation of a solvent credit union, the Board, in its discretion, is authorized to make loans to, or purchase the assets of, or establish accounts in such insured credit union upon such terms and conditions as it may prescribe. Except with respect to the voluntary liquidation of a solvent credit union, such loans shall be made and such accounts shall be established only when, in the opinion of the Board, such action is necessary to protect the fund or the interests of the members of the credit union.

(2) Whenever in the judgment of the Board such action will reduce the risk or avert a threatened loss to the fund and will facilitate a merger or consolidation of an insured credit union with another insured credit union, or will facilitate the sale of the assets of an open or closed insured credit union to and assumption of its liability by another person, the Board may, upon such terms and conditions as it may determine, make loans secured in whole or in part by assets of an open or closed insured credit union, which loans may be in subordination to the rights of members and creditors of such credit union, or the Board may purchase any of such assets or may guarantee any person against loss by reason of its assuming the liabilities and purchasing the assets of an open or closed insured credit union. For purposes of this paragraph, the term "person" means any credit union, individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(3) No agreement which tends to diminish or defeat the right, title, or interest of the Board, in any asset acquired by them under this sub-

section, either as security for a loan or by purchase, shall be valid against the Board unless such agreement—

[*See main edition for text of (A) to (D)*]

(b) Protection of Fund

For the protection of the Fund, the Board, without regard to the Federal Property and Administrative Services Act of 1949, may—

(1) deal with, complete, reconstruct, rent, renovate, modernize, insure, make contracts for the management of, sell for cash or credit, or lease, in its discretion, any real property acquired or held by them under this section; and

(2) assign or sell at public or private sale, or otherwise dispose of, any evidence of debt, contract, claim, personal property, or security assigned to or held by them under this section.

Section 5 of title 41 shall not apply to any purchase or contract for services or supplies made or entered into by the Board under this section if the amount thereof does not exceed $1,000, or to any contract for hazard insurance on any real property acquired or held by them under this section.

(c) Power of Board respecting liquidations subject to court or public body regulation

In connection with the liquidation of any insured credit union, the Board shall have the power to carry on the business of and collect all obligations to the credit union, to settle, compromise, or release claims in favor of or against the credit union, and to do all other things that may be necessary in connection therewith, subject to the regulation of the court or other public body having jurisdiction over the matter.

(d) Money paid into Fund

Money received by the Board in carrying out this section shall be paid into the Fund.

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator" wherever appearing, and "it", "them", and "its" for "he", "him", and "his", respectively, where appropriate.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1789. Administrative provisions

(a) In carrying out the purposes of this subchapter, the Board may—

(1) make contracts;

(2) sue and be sued, complain and defend, in any court of law or equity, State or Federal. All suits of a civil nature at common law or in equity to which the Board shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy. The Board may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect, except that any such suit to which the Board is a party in its capacity as liquidating agent of a State-chartered credit union and which involves only the rights or obligations of members, creditors, and such State credit union under State law shall not be deemed to rise under the laws of the United States. No attachment or execution shall be issued against the Board or its property before final judgment in any suit, action, or proceeding in any State, county, municipal, or United States court. The Board shall designate an agent upon whom service of process may be made in any State, territory, or jurisdiction in which any insured credit union is located;

[*See main edition for text of (3) to (5)*]

(6) prescribe the manner in which its general business may be conducted and the privileges granted to them by law may be exercised and enjoyed;

[*See main edition for text of (7) to (9)*]

(10) delegate to any officer or employee of the Administration such of its functions as it deems appropriate; and

(11) prescribe such rules and regulations as it may deem necessary or appropriate to carry out the provisions of this subchapter.

(b) With respect to the financial operations arising by reason of this subchapter, the Board shall—

[*See main edition for text of (1) and (2)*]

(As amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), 92 Stat. 3681.)

AMENDMENTS

1978—Pub. L. 95-630 substituted "Board" for "Administrator" wherever appearing, and "its", "it", and "them" for "his", "he", and "him", respectively, where appropriate.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1789a. Credit unions as depositaries of public money; fiscal agents; duties

Any credit union the accounts of which are insured under this title shall be a depositary of public money and may be employed as fiscal agent of the United States. The Secretary of the Treasury is authorized to deposit public money in any such insured credit union, and shall prescribe such regulations as may be necessary to enable such credit unions to become depositaries of public money and fiscal agents of the United States. Each credit union shall perform all such reasonable duties as depositaries of public money and fiscal agent of the United States as may be required of it including

services in connection with the collection of taxes and other obligations owed the United States.

(June 26, 1934, ch. 750, title II, § 210, as added Oct. 28, 1977, Pub. L. 95-147, § 2(c)(1), 91 Stat. 1227.)

PRIOR PROVISIONS

A prior section 210 of act June 26, 1934, relating to nondiscriminatory provisions, enacted section 1790 of this title, and was redesignated 211 by § 2(c)(2) of Pub. L. 95-147.

§ 1790. Nondiscriminatory provisions

CODIFICATION

Section 210 of act June 26, 1934, ch. 750, cited as a credit to this section, was redesignated section 211 by Pub. L. 95-147, § 2(c)(2), Oct. 28, 1977, 91 Stat. 1228.

SUBCHAPTER III—CENTRAL LIQUIDITY FACILITY [NEW]

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1757 of this title.

§ 1795. Congressional findings

The Congress finds that the establishment of a National Credit Union Central Liquidity Facility is needed to improve general financial stability by meeting the liquidity needs of credit unions and thereby encourage savings, support consumer and mortgage lending, and provide basic financial resources to all segments of the economy.

(June 26, 1934, ch. 750, subch. III, § 301, as added Nov. 10, 1978, Pub. L. 95-630, title XVIII, § 1802, 92 Stat. 3719.)

EFFECTIVE DATE

Section 1806 of title XVIII of Pub. L. 95-630 provided that: "This title [enacting this subchapter and amending section 1757 of this title, section 709 of Title 18, Crimes and Criminal Procedure, and section 856 of Title 31, Money and Finance] shall take effect on October 1, 1979."

SHORT TITLE

For short title of title XVIII of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3719, as the "National Credit Union Central Liquidity Facility Act", see section 1801 of Pub. L. 95-630, set out as a Short Title of 1978 Amendment note under section 1751 of this title.

§ 1795a. Definitions

As used in this subchapter, the term—

(1) "liquidity needs" means the needs of credit unions primarily serving natural persons for—

(A) short-term adjustment credit available to assist in meeting temporary requirements for funds or to cushion more persistent outflows of funds pending an orderly adjustment of credit union assets and liabilities;

(B) seasonal credit available for longer periods to assist in meeting seasonal needs for funds arising from a combination of expected patterns of movement in share and deposit accounts and loans; and

(C) protracted adjustment credit available in the event of unusual or emergency circumstances of a longer term nature resulting from national, regional or local difficulties.

(2) "Central Liquidity Facility" or "Facility" means the National Credit Union Central Liquidity Facility;

(3) "paid-in and unimpaired capital and surplus" means the balance of the paid-in share accounts and deposits as of a given date, less any loss that may have been incurred for which there is no reserve or which has not been charged against undivided earnings, plus the credit balance (or less the debit balance) of the undivided earnings account as of a given date, after all losses have been provided for and net earnings or net losses have been added thereto or deducted therefrom. Reserves shall not be considered as part of surplus, and

(4) "member" means a Regular or an Agent member of the Facility.

(June 26, 1934, ch. 750, subch. III, § 302, as added Nov. 10, 1978, Pub. L. 95-630, title XVIII, § 1802, 92 Stat. 3719.)

§ 1795b. National Credit Union Administration Central Liquidity Facility; establishment; management; jurisdiction

There is created the National Credit Union Administration Central Liquidity Facility. The Central Liquidity Facility shall exist within the National Credit Union Administration and be managed by the Board. The United States district court shall have original jurisdiction over any case to which the Board on behalf of the Facility is a party, without regard to the amount in controversy.

(June 26, 1934, ch. 750, subch. III, § 303, as added and amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), title XVIII, § 1802, 92 Stat. 3681, 3720.)

AMENDMENTS

1978—Pub. L. 95-630, § 502(b), substituted "Board" for "Administrator" in two places.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1795c. Membership

(a) Credit unions serving natural persons

A credit union primarily serving natural persons may be a Regular member of the Facility by subscribing to the capital stock of the Facility in an amount not less than one-half of 1 per centum of the credit union's paid-in and unimpaired capital and surplus.

(b) Credit unions serving other credit unions

A credit union or group of credit unions, primarily serving other credit unions, may be an Agent member of the Facility by—

(1) obtaining the approval of the Board;

(2) subscribing to the capital stock of the Facility in an amount not less than one-half of 1 per centum of the paid-in and unimpaired capital and surplus of all those credit

unions which primarily serve natural persons, which are members of such credit union or of any credit union comprising such credit union group, and which are not regular members;

(3) agreeing to comply with rules and regulations the Board shall prescribe with respect to, but not limited to, management quality, asset and liability safety and soundness, internal operating and control practices and procedures, and participation of natural persons in the affairs or such credit union or credit union group; and

(4) agreeing to submit to the supervision of the Board which shall include, but not be limited to, reporting requirements and periodic unrestricted examinations.

(c) Stock subscription requirements

Stock subscriptions provided for in subsections (a) and (b)(2) of this section shall be—

(1) based on an arithmetic average of paid-in capital and surplus over the six months preceding application and membership; and

(2) adjusted at the close of each calendar year in accordance with an arithmetic average of paid-in capital and surplus over a period determined by the Board.

(d) Functions of Agent members of Facility

An Agent member of the Facility shall perform for its member credit unions those functions required by the Board to carry out this subchapter.

(e) Withdrawal from or termination of membership

(1) A member of the Facility whose capital stock subscription constitutes less than 5 per centum of such stock outstanding, may withdraw from membership in the Facility six months after notifying the Board of its intention to do so.

(2) A member of the Facility whose capital stock subscription constitutes 5 per centum or more of such stock outstanding, may withdraw from membership in the Facility twenty-four months after notifying the Board of its intention to do so.

(3) The Board may terminate membership in the Facility if, after opportunity for a hearing, the Board determines a member has failed to comply with any provision of this subchapter or regulation issued pursuant thereto.

(June 26, 1934, ch. 750, subch. III, § 304, as added and amended Nov. 10, 1978, Pub. L. 95–630, title V, § 502(b), title XVIII, § 1802, 92 Stat. 3681, 3720.)

AMENDMENTS

1978—Pub. L. 95–630, § 502(b), substituted "Board" for "Administrator" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1795d of this title.

§ 1795d. Capital stock

(a) Opening of books; minimum subscription

As soon as practicable, the Board shall open books for subscriptions to the capital stock of the Facility. The minimum subscription shall be $50.

(b) Requirements

The capital stock of the Facility—

(1) shall be divided into shares having a par value of $50 each;

(2) shall be paid for with cash or with securities of the United States or any Agency thereof in accordance with requirements the Board may impose;

(3) shall share in dividend distributions without preference and at rates to be determined by the Board; and

(4) shall not be transferred or hypothecated except as provided for herein.

(c) Redemption of stock

When circumstances require that all or a portion of a member's stock be redeemed by the Facility, the Board shall pay an amount equal to what the member originally paid for the stock less any amount owed by the member to the Facility.

(d) Use of subscription amount

At least one-half of the payment for the subscription amount required for membership under section 1795c of this title shall be transferred to the Facility. The remainder may be held by the member on call of the Board and shall be invested in assets designated by the Board.

(e) Restriction on advances to credit unions

A credit union or credit union group that becomes a member of the Facility later than six months after the date the Board opens books for capital stock subscriptions, may not borrow or receive advances from the Facility without approval by the Board for a period of six months after becoming a member.

(June 26, 1934, ch. 750, subch. III, § 305, as added and amended Nov. 10, 1978, Pub. L. 95–630, title V, § 502(b), title XVIII, § 1802, 92 Stat. 3681, 3721.)

AMENDMENTS

1978—Pub. L. 95–630, § 502(b), substituted "Board" for "Administrator" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1795e. Extensions of credit

(a)(1) A member may apply for an extension of credit from the Facility to meet its liquidity needs. The Board shall approve or deny any such application within five working days after receiving it. The Board shall not approve an application for credit the intent of which is to expand credit union portfolios.

(2) The Board may advance funds to a member on terms and conditions prescribed by

the Board after giving due consideration to creditworthiness.

(3) The Board shall not advance funds for the benefit of a credit union whose share or deposit accounts are insured by a State share or deposit guaranty credit union, insurance corporation, or guaranty association, without consultation with the appropriate State share or deposit guaranty credit union, insurance corporation, or guaranty association.

(b) The Secretary of the Treasury is authorized to lend to the Facility up to $500,000,000, in the event the Board certifies to the Secretary that the Facility does not have sufficient funds to meet liquidity needs of credit unions. Any such loan shall bear an interest rate not greater than one-eighth of 1 per centum above the current average market yield on outstanding obligations of the United States with remaining time to maturity comparable to the maturity of such loan. The authority of the Secretary to lend under this subsection shall be limited to such extent or in such amounts as are provided in advance in appropriation Acts.

(June 26, 1934, ch. 750, subch. III, § 306, as added and amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), title XVIII, § 1802, 92 Stat. 3681, 3721.)

AMENDMENTS

1978—Pub. L. 95-630, § 502(b), substituted "Board" for "Administrator" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1795f. Powers of Board

The Board on behalf of the Facility shall have the ability to—

(1) prescribe the manner in which the general business of the Facility shall be conducted;

(2) prescribe rules and regulations to carry out this subchapter;

(3) determine the expenditures incurred by the Administration to carry out this subchapter, and the expenditures incurred by the Facility to carry out subchapters I and II of this chapter, and annually assess the Facility and the Administration accordingly;

(4) borrow from—

(A) any source, provided that the total face value of these obligations shall not exceed twelve times the subscribed capital stock and surplus of the Facility; and

(B) the National Credit Union Share Insurance Fund up to $500,000 to defray initial organizational and operating expenses of the Facility at such rates and terms consistent with prevailing market conditions;

(5) guarantee performance of the terms of any financial obligation of a member but only when such obligation bears a clear and conspicuous notice on its face that only the resources of the Facility underlie such guarantee;

(6) purchase any asset from a member with the member's endorsement;

(7) invest in obligations of the United States or any agency thereof;

(8) make deposits in federally insured financial institutions and make investments in shares or deposits of credit unions;

(9) sue and be sued, complain, and defend, in any State or Federal court;

(10) adopt a seal;

(11) pursue to final disposition by way of compromise or otherwise claims both for and against the United States (other than tort claims, claims involving administrative expenses, and claims in excess of $5,000 arising out of contracts for construction, repairs, and the purchase of supplies and materials) which are not in litigation and have not been referred to the Department of Justice;

(12) appoint officers and employees to assist in carrying out this subchapter, who shall be appointed subject to the provisions of title 5;

(13) conduct business, carry on operations, have offices, and exercise the powers granted by this subchapter in any State or territory;

(14) lease, purchase, or otherwise acquire and own, hold, improve, use, or otherwise deal in and with property, real, personal, or mixed, or any interest therein, wherever situated;

(15) enter into contracts with any public or private organization, partnership, corporation, or individual, to the extent or in such amounts as are provided in advance in appropriation Acts; and

(16) advance funds on a fully secured basis to a State credit union share or deposit insurance corporation, guaranty credit union, or guaranty association. Such advance shall not exceed twelve months in maturity, shall be relent at an interest rate not exceeding that imposed by the Facility, and shall not be renewable.

(June 26, 1934, ch. 750, subch. III, § 307, as added and amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), title XVIII, § 1802, 92 Stat. 3681, 3722.)

AMENDMENTS

1978—Pub. L. 95-630, § 502(b), substituted "Board" for "Administrator".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1795g. Depositories, custodians, and fiscal agents

The Federal Reserve Banks are authorized to act as depositories, custodians and/or fiscal agents for the Central Liquidity Facility in the general performance of its powers conferred by this subchapter. Each Federal Reserve Bank when designated by the Board as fiscal agent for the Central Liquidity Facility, shall be entitled to be reimbursed for all expenses incurred as such fiscal agent.

(June 26, 1934, ch. 750, subch. III, § 308, as added and amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), title XVIII, § 1802, 92 Stat. 3681, 3723.)

unions which primarily serve natural persons, which are members of such credit union or of any credit union comprising such credit union group, and which are not regular members;

(3) agreeing to comply with rules and regulations the Board shall prescribe with respect to, but not limited to, management quality, asset and liability safety and soundness, internal operating and control practices and procedures, and participation of natural persons in the affairs or such credit union or credit union group; and

(4) agreeing to submit to the supervision of the Board which shall include, but not be limited to, reporting requirements and periodic unrestricted examinations.

(c) Stock subscription requirements

Stock subscriptions provided for in subsections (a) and (b)(2) of this section shall be—

(1) based on an arithmetic average of paid-in capital and surplus over the six months preceding application and membership; and

(2) adjusted at the close of each calendar year in accordance with an arithmetic average of paid-in capital and surplus over a period determined by the Board.

(d) Functions of Agent members of Facility

An Agent member of the Facility shall perform for its member credit unions those functions required by the Board to carry out this subchapter.

(e) Withdrawal from or termination of membership

(1) A member of the Facility whose capital stock subscription constitutes less than 5 per centum of such stock outstanding, may withdraw from membership in the Facility six months after notifying the Board of its intention to do so.

(2) A member of the Facility whose capital stock subscription constitutes 5 per centum or more of such stock outstanding, may withdraw from membership in the Facility twenty-four months after notifying the Board of its intention to do so.

(3) The Board may terminate membership in the Facility if, after opportunity for a hearing, the Board determines a member has failed to comply with any provision of this subchapter or regulation issued pursuant thereto.

(June 26, 1934, ch. 750, subch. III, § 304, as added and amended Nov. 10, 1978, Pub. L. 95–630, title V, § 502(b), title XVIII, § 1802, 92 Stat. 3681, 3720.)

AMENDMENTS

1978—Pub. L. 95–630, § 502(b), substituted "Board" for "Administrator" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1795d of this title.

§ 1795d. Capital stock

(a) Opening of books; minimum subscription

As soon as practicable, the Board shall open books for subscriptions to the capital stock of the Facility. The minimum subscription shall be $50.

(b) Requirements

The capital stock of the Facility—

(1) shall be divided into shares having a par value of $50 each;

(2) shall be paid for with cash or with securities of the United States or any Agency thereof in accordance with requirements the Board may impose;

(3) shall share in dividend distributions without preference and at rates to be determined by the Board; and

(4) shall not be transferred or hypothecated except as provided for herein.

(c) Redemption of stock

When circumstances require that all or a portion of a member's stock be redeemed by the Facility, the Board shall pay an amount equal to what the member originally paid for the stock less any amount owed by the member to the Facility.

(d) Use of subscription amount

At least one-half of the payment for the subscription amount required for membership under section 1795c of this title shall be transferred to the Facility. The remainder may be held by the member on call of the Board and shall be invested in assets designated by the Board.

(e) Restriction on advances to credit unions

A credit union or credit union group that becomes a member of the Facility later than six months after the date the Board opens books for capital stock subscriptions, may not borrow or receive advances from the Facility without approval by the Board for a period of six months after becoming a member.

(June 26, 1934, ch. 750, subch. III, § 305, as added and amended Nov. 10, 1978, Pub. L. 95–630, title V, § 502(b), title XVIII, § 1802, 92 Stat. 3681, 3721.)

AMENDMENTS

1978—Pub. L. 95–630, § 502(b), substituted "Board" for "Administrator" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95–630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1795e. Extensions of credit

(a)(1) A member may apply for an extension of credit from the Facility to meet its liquidity needs. The Board shall approve or deny any such application within five working days after receiving it. The Board shall not approve an application for credit the intent of which is to expand credit union portfolios.

(2) The Board may advance funds to a member on terms and conditions prescribed by

the Board after giving due consideration to creditworthiness.

(3) The Board shall not advance funds for the benefit of a credit union whose share or deposit accounts are insured by a State share or deposit guaranty credit union, insurance corporation, or guaranty association, without consultation with the appropriate State share or deposit guaranty credit union, insurance corporation, or guaranty association.

(b) The Secretary of the Treasury is authorized to lend to the Facility up to $500,000,000, in the event the Board certifies to the Secretary that the Facility does not have sufficient funds to meet liquidity needs of credit unions. Any such loan shall bear an interest rate not greater than one-eighth of 1 per centum above the current average market yield on outstanding obligations of the United States with remaining time to maturity comparable to the maturity of such loan. The authority of the Secretary to lend under this subsection shall be limited to such extent or in such amounts as are provided in advance in appropriation Acts.

(June 26, 1934, ch. 750, subch. III, § 306, as added and amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), title XVIII, § 1802, 92 Stat. 3681, 3721.)

AMENDMENTS

1978—Pub. L. 95-630, § 502(b), substituted "Board" for "Administrator" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1795f. Powers of Board

The Board on behalf of the Facility shall have the ability to—

(1) prescribe the manner in which the general business of the Facility shall be conducted;

(2) prescribe rules and regulations to carry out this subchapter;

(3) determine the expenditures incurred by the Administration to carry out this subchapter, and the expenditures incurred by the Facility to carry out subchapters I and II of this chapter, and annually assess the Facility and the Administration accordingly;

(4) borrow from—

(A) any source, provided that the total face value of these obligations shall not exceed twelve times the subscribed capital stock and surplus of the Facility; and

(B) the National Credit Union Share Insurance Fund up to $500,000 to defray initial organizational and operating expenses of the Facility at such rates and terms consistent with prevailing market conditions;

(5) guarantee performance of the terms of any financial obligation of a member but only when such obligation bears a clear and conspicuous notice on its face that only the resources of the Facility underlie such guarantee;

(6) purchase any asset from a member with the member's endorsement;

(7) invest in obligations of the United States or any agency thereof;

(8) make deposits in federally insured financial institutions and make investments in shares or deposits of credit unions;

(9) sue and be sued, complain, and defend, in any State or Federal court;

(10) adopt a seal;

(11) pursue to final disposition by way of compromise or otherwise claims both for and against the United States (other than tort claims, claims involving administrative expenses, and claims in excess of $5,000 arising out of contracts for construction, repairs, and the purchase of supplies and materials) which are not in litigation and have not been referred to the Department of Justice;

(12) appoint officers and employees to assist in carrying out this subchapter, who shall be appointed subject to the provisions of title 5;

(13) conduct business, carry on operations, have offices, and exercise the powers granted by this subchapter in any State or territory;

(14) lease, purchase, or otherwise acquire and own, hold, improve, use, or otherwise deal in and with property, real, personal, or mixed, or any interest therein, wherever situated;

(15) enter into contracts with any public or private organization, partnership, corporation, or individual, to the extent or in such amounts as are provided in advance in appropriation Acts; and

(16) advance funds on a fully secured basis to a State credit union share or deposit insurance corporation, guaranty credit union, or guaranty association. Such advance shall not exceed twelve months in maturity, shall be relent at an interest rate not exceeding that imposed by the Facility, and shall not be renewable.

(June 26, 1934, ch. 750, subch. III, § 307, as added and amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), title XVIII, § 1802, 92 Stat. 3681, 3722.)

AMENDMENTS

1978—Pub. L. 95-630, § 502(b), substituted "Board" for "Administrator".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1795g. Depositories, custodians, and fiscal agents

The Federal Reserve Banks are authorized to act as depositories, custodians and/or fiscal agents for the Central Liquidity Facility in the general performance of its powers conferred by this subchapter. Each Federal Reserve Bank when designated by the Board as fiscal agent for the Central Liquidity Facility, shall be entitled to be reimbursed for all expenses incurred as such fiscal agent.

(June 26, 1934, ch. 750, subch. III, § 308, as added and amended Nov. 10, 1978, Pub. L. 95-630, title V, § 502(b), title XVIII, § 1802, 92 Stat. 3681, 3723.)

AMENDMENTS

1978—Pub. L. 95-630, § 502(b), substituted "Board" for "Administrator".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630 set out as an Effective Date of 1978 Amendment note under section 1752 of this title.

§ 1795h. Audit of financial transactions

The Comptroller General of the United States shall audit the Central Liquidity Facility under such rules and regulations as the Comptroller may prescribe.

(June 26, 1934, ch. 750, subch. III, § 309, as added Nov. 10, 1978, Pub. L. 95-630, title XVIII, § 1802, 92 Stat. 3723.)

§ 1795i. Annual report

The annual report required by section 1752a(e)[1] of this title shall include a full report of the activities of the Facility.

(June 26, 1934, ch. 750, subch. III, § 310, as added Nov. 10, 1978, Pub. L. 95-630, title XVIII, § 1802, 92 Stat. 3723.)

CHAPTER 16—FEDERAL DEPOSIT INSURANCE CORPORATION

Sec.
1831c. Conversion of mutual savings banks [New].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 82, 161, 222, 329, 1425b, 1470, 1841, 2254, 3108 of this title; title 15 sections 78c, 78*l*, 78m.

§ 1811. Creation of Corporation; duties

SHORT TITLE OF 1978 AMENDMENT

Section 601 of title VI of Pub. L. 95-630 Nov. 10, 1978, 92 Stat. 3683, provided that: "This title [which amended section 1817 of this title] may be cited as the 'Change in Bank Control Act of 1978'."

§ 1813. Definitions

As used in this chapter—

[*See main edition for text of* (*a*) *to* (*g*)]

(h) The term "insured bank" means any bank (including a foreign bank having an insured branch) the deposits of which are insured in accordance with the provisions of this chapter; and the term "noninsured bank" means any bank the deposits of which are not so insured.

[*See main edition for text of* (*i*)]

(j) The term "receiver" includes a receiver, liquidating agent, conservator, commission, person, or other agency charged by law with the duty of winding up the affairs of a bank or of a branch of a foreign bank.

[*See main edition for text of* (*k*) *and* (*l*)]

(m)(1) Subject to the provisions of paragraph (2) of this subsection, the term "insured deposit" means the net amount due to any depositor (other than a depositor referred to in the third sentence of this subsection) for deposits in an insured bank (after deducting offsets) less any part thereof which is in excess of $40,000. Such net amount shall be determined according to such regulations as the Board of Directors may prescribe, and in determining the amount due to any depositor there shall be added together all deposits in the bank maintained in the same capacity and the same right for his benefit either in his own name or in the names of others except trust funds which shall be insured as provided in subsection (i) of section 1817 of this title. Each officer, employee, or agent of the United States, of Puerto Rico, of Guam, of American Samoa, of the Virgin Islands, of any county, of any municipality, or of any political subdivision thereof, herein called "public unit", having official custody of public funds and lawfully depositing the same in an insured bank shall, for the purpose of determining the amount of the insured deposits, be deemed a depositor in such custodial capacity separate and distinct from any other officer, employee, or agent of the same or any public unit having official custody of public funds and lawfully depositing the same in the same insured bank in custodial capacity. For the purpose of clarifying and defining the insurance coverage under this subsection and subsection (i) of section 1817 of this title, the Corporation is authorized to define, with such classifications and exceptions as it may prescribe, terms used in those subsections, in subsection (p) of this section, and in subsections (a) and (i) of section 1821 of this title and the extent of the insurance coverage resulting therefrom.

(2) In the case of any deposit in a branch of a foreign bank, the ther[1] "insured deposit" means an insured deposit as defined in paragraph (1) of this subsection which—

(A) is payable in the United States to—

(i) an individual who is a citizen or resident of the United States,

(ii) a partnership, corporation, trust, or other legally cognizable entity created under the laws of the United States or any State and having its principal place of business within the United States or any State, or

(iii) an individual, partnership, corporation, trust, or other legally cognizable entity which is determined by the Board of Directors in accordance with its regulations to have such business or financial relationships in the United States as to make the insurance of such deposit consistent with the purposes of this chapter;

and

(B) meets any other criteria prescribed by the Board of Directors by regulation as necessary or appropriate in its judgment to carry out the purposes of this chapter or to facilitate the administration thereof.

[*See main edition for text of* (*n*)]

(*o*) The term "domestic branch" includes any branch bank, branch office, branch agency, ad-

[1] So in original. Probably should be "section 1752a(d)".

[1] So in original. Probably should be "term".

ditional office, or any branch place of business located in any State of the United States or in any Territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands at which deposits are received or checks paid or money lent; and the term "foreign branch" means any office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, or the Virgin Islands, at which banking operations are conducted.

[*See main edition for text of (p)*]

(q) The term "appropriate Federal banking agency" shall mean—

(1) the Comptroller of the Currency in the case of a national banking association, a District bank, or a Federal branch or agency of a foreign bank;

(2) the Board of Governors of the Federal Reserve System—

(A) in the case of a State member insured bank (except a District bank),

(B) in the case of any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act [12 U.S.C. 221 et seq.] which is made applicable under the International Banking Act of 1978 [12 U.S.C. 3101 et seq.],

(C) in the case of any foreign bank which does not operate an insured branch,

(D) in the case of any agency or commercial lending company other than a Federal agency, and

(E) in the case of supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978 [12 U.S.C. 3105(b)(1)], including such proceedings under the Financial Institutions Supervisory Act, and

(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured Bank (except a District bank) or a foreign bank having an insured branch.

Under the rule set forth in this subsection, more than one agency may be an appropriate Federal banking agency with respect to any given institution. For the purposes of subsections (b) through (n) of section 1818 of this title, the term "insured bank" shall be deemed to include any uninsured branch or agency of a foreign bank or any commercial lending company owned or controlled by a foreign bank.

(r) The terms "foreign bank" and "Federal branch" shall be construed consistently with the usage of such terms in the International Banking Act of 1978 [12 U.S.C. 3101 et seq.].

(s) The term "insured branch" means a branch of a foreign bank any deposits in which are insured in accordance with the provisions of this chapter.

(As amended Sept. 17, 1978, Pub. L. 95-369, § 6(c)(2)-(6), 92 Stat. 614, 615; Nov. 10, 1978, Pub. L. 95-630, title III, § 301(a), 92 Stat. 3675.)

REFERENCES IN TEXT

The Federal Reserve Act, referred to in subsec. (q)(2)(B), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see Distribution note set out under section 226 of this title and Tables.

The International Banking Act of 1978, referred to in subsecs. (q)(2)(B) and (r), is Pub. L. 95-369, Sept. 17, 1978, 92 Stat. 607, which enacted sections 347d, 611a, and 3101 to 3108 of this title, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, 1831b, and 1841 of this title, and enacted provisions set out as notes under sections 36, 247, 601, 611a, and 3101 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

The Financial Institutions Supervisory Act, referred to in subsec. (q)(2)(E), is Pub. L. 89-695, Oct. 16, 1966, 80 Stat. 1028. For complete classification of this Act to the Code, see Short Title note set out under section 1464 of this title and Tables.

AMENDMENTS

1978—Subsec. (h). Pub. L. 95-369, § 6(c)(2), inserted "(including a foreign bank having an insured branch)" following "The term 'insured bank' means any bank".

Subsec. (j). Pub. L. 95-369, § 6(c)(3), inserted "or of a branch of a foreign bank" following "affairs of a bank".

Subsec. (m). Pub. L. 95-369, § 6(c)(4), designated existing provisions as subsec. (m)(1), and in subsec. (m)(1) as so designated, inserted "Subject to the provisions of paragraph (2) of this subsection", and added subsec. (m)(2).

Subsec. (o). Pub. L. 95-630 inserted "domestic" immediately before "branch" the first time it appeared, and added a definition of "foreign branch" at the end.

Subsec. (q). Pub. L. 95-369, § 6(c)(5), inserted reference to a Federal branch or agency of a foreign bank in par. (1), designated existing provisions of par. (2) as par. (2)(A) and added subpars. (B) to (E), added the reference to a foreign bank having an insured branch in par. (3), and added closing provisions relating to the number of agencies which may be an appropriate Federal banking agency, and defining "insured bank" for purposes of section 1818(b) to (n) of this title.

Subsecs. (r), (s). Pub. L. 95-369, § 6(c)(6), added subsecs. (r) and (s).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (o) by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630 set out as an Effective Date note under section 375b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 265, 1817, 1828, 1832, 1842, 2804, 2902, 3102, 3104 of this title; title 29 section 1134; title 31 section 1052.

§ 1815. Application of national, State and foreign branch nonmember banks for insured status

(a) National and State nonmember banks; matters considered

Subject to the provisions of this chapter, any national nonmember bank which is engaged in the business of receiving deposits, other than trust funds as herein defined, upon application by the bank and certification by the Comptroller of the Currency in the manner prescribed in subsection (b) of section 1814 of this title and any State nonmember bank, upon application to and examination by the Corporation and approval by the Board of Directors, may become an insured bank. Before approving the application of any such State nonmember bank, the Board of Directors shall give consideration to the factors enumerated in section 1816 of this

title and shall determine, upon the basis of a thorough examination of such bank, that its assets in excess of its capital requirements are adequate to enable it to meet all of its liabilities to depositors and other creditors as shown by the books of the bank.

(b) Foreign branch nonmember banks; matters considered

Subject to the provisions of this chapter and to such terms and conditions as the Board of Directors may impose, any branch of a foreign bank, upon application by the bank to the Corporation, and examination by the Corporation of the branch, and approval by the Board of Directors, may become an insured branch. Before approving any such application, the Board of Directors shall give consideration to—

(1) the financial history and condition of the bank,

(2) the adequacy of its capital structure,

(3) its future earnings prospects,

(4) the general character of its management, including but not limited to the management of the branch proposed to be insured,

(5) the convenience and needs of the community to be served by the branch,

(6) whether or not its corporate powers, insofar as they will be exercised through the proposed insured branch, are consistent with the purposes of this chapter, and

(7) the probable adequacy and reliability of information supplied and to be supplied by the bank to the Corporation to enable it to carry out its functions under this chapter.

(c) Protection to deposit insurance fund; surety bond, pledge of assets, etc., injunction

(1) Before any branch of a foreign bank becomes an insured branch, the bank shall deliver to the Corporation or as the Corporation may direct a surety bond, a pledge of assets, or both, in such amounts and of such types as the Corporation may require or approve, for the purpose set forth in paragraph (4) of this subsection.

(2) After any branch of a foreign bank becomes an insured branch, the bank shall maintain on deposit with the Corporation, or as the Corporation may direct, surety bonds or assets or both, in such amounts and of such types as shall be determined from time to time in accordance with such regulations as the Board of Directors may prescribe. Such regulations may impose differing requirements on the basis of any factors which in the judgment of the Board of Directors are reasonably related to the purpose set forth in paragraph (4).

(3) The Corporation may require of any given bank larger deposits of bonds and assets than required under paragraph (2) of this subsection if, in the judgment of the Corporation, the situation of that bank or any branch thereof is or becomes such that the deposits of bonds and assets otherwise required under this section would not adequately fulfill the purpose set forth in paragraph (4). The imposition of any such additional requirements may be without notice or opportunity for hearing, but the Corporation shall afford an opportunity to any such bank to apply for a reduction or removal of any such additional requirements so imposed.

(4) The purpose of the surety bonds and pledges of assets required under this subsection is to provide protection to the deposit insurance fund against the risks entailed in insuring the domestic deposits of a foreign bank whose activities, assets, and personnel are in large part outside the jurisdiction of the United States. In the implementation of its authority under this subsection, however, the Corporation shall endeavor to avoid imposing requirements on such banks which would unnecessarily place them at a competitive disadvantage in relation to domestically incorporated banks.

(5) In the case of any failure or threatened failure of a foreign bank to comply with any requirement imposed under this subsection (c), the Corporation, in addition to all other administrative and judicial remedies, may apply to any United States district court, or United States court of any territory, within the jurisdiction of which any branch of the bank is located, for an injunction to compel such bank and any officer, employee, or agent thereof, or any other person having custody or control of any of its assets, to deliver to the Corporation such assets as may be necessary to meet such requirement, and to take any other action necessary to vest the Corporation with control of assets so delivered. If the court shall determine that there has been any such failure or threatened failure to comply with any such requirement, it shall be the duty of the court to issue such injunction. The propriety of the requirement may be litigated only as provided in chapter 7 of title 5, and may not be made an issue in an action for an injunction under this paragraph.

(As amended Sept. 17, 1978, Pub. L. 95-369, § 6(c)(7), 92 Stat. 616.)

AMENDMENTS

1978—Pub. L. 95-369 designated existing provision as subsec. (a) and added subsecs. (b) and (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1816, 3104 of this title.

§ 1817. Assessments

(a) Reports of condition; access to bank examination reports

(1) Each insured State nonmember bank (except a District bank) and each foreign bank having an insured branch which is not a Federal branch shall make to the Corporation reports of condition which shall be in such form and shall contain such information as the Board of Directors may require. Such reports shall be made to the Corporation on the dates selected as provided in paragraph (3) of this subsection and the deposit liabilities shall be reported therein in accordance with and pursuant to paragraphs (4) and (5) of this subsection. The Board of Directors may call for additional reports of condition on dates to be fixed by it and may call for such other reports as the Board may from time to time require. The Board of Directors may require reports of con-

dition to be published in such manner, not inconsistent with any applicable law, as it may direct. Every such bank which fails to make or publish any such report within ten days shall be subject to a penalty of not more than $100 for each day of such failure recoverable by the Corporation for its use.

[*See main edition for text of* (2)]

(3) Each insured State nonmember bank (except a District bank) and each foreign bank having an insured branch (other than a Federal branch) shall make to the Corporation, each insured national bank, each foreign bank having an insured branch which is a Federal branch, and each insured District bank shall make to the Comptroller of the Currency, and each insured State member bank shall make to the Federal Reserve bank of which it is a member, four reports of condition annually upon dates which shall be selected by the Chairman of the Board of Directors, the Comptroller of the Currency, and the Chairman of the Board of Governors of the Federal Reserve System, or a majority thereof. The dates selected shall be the same for all insured banks, except that when any of said reporting dates is a nonbusiness day for any bank, the preceding business day shall be its reporting date. Two dates shall be selected within the semiannual period of January to June inclusive, and the reports on such dates shall be the basis for the certified statement to be filed in July pursuant to subsection (c) of this section, and two dates shall be selected within the semiannual period of July to December inclusive, and the reports on such dates shall be the basis for the certified statement to be filed in January pursuant to subsection (c) of this section. The deposit liabilities shall be reported in said reports of conditions in accordance with and pursuant to paragraphs (4) and (5) of this subsection, and such other information shall be reported therein as may be required by the respective agencies. Each said report of condition shall contain a declaration by the president, a vice president, the cashier or the treasurer, or by any other officer designated by the board of directors or trustees of the reporting bank to make such declaration, that the report is true and correct to the best of his knowledge and belief. The correctness of said report of condition shall be attested by the signatures of at least two directors or trustees of the reporting bank other than the officer making such declaration, with a declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct. At the time of making said reports of condition each insured national, District and State member bank shall furnish to the Corporation a copy thereof containing such signed declaration and attestations. Nothing herein shall preclude any of the foregoing agencies from requiring the banks under its jurisdiction to make additional reports of condition at any time.

(4) In the reports of condition required to be made by paragraph (3) of this subsection, each insured bank shall report the total amount of the liability of the bank for deposits in the main office and in any branch located in any State of the United States, the District of Columbia, any Territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, according to the definition of the term "deposit" in and pursuant to subsection (*l*) of section 1813 of this title without any deduction for indebtedness of depositors or creditors or any deduction for cash items in the process of collection drawn on others than the reporting bank: *Provided,* That the bank in reporting such deposits may (i) subtract from the deposit balance due to any bank the deposit balance due from the same bank (other than trust funds deposited by either bank) and any cash items in the process of collection due from or due to such banks shall be included in determining such net balance, except that balances of time deposits of any bank and any balances standing to the credit of private banks, of banks in foreign countries, of foreign branches of other American banks, and of American branches of foreign banks shall be reported gross without any such subtraction, and (ii) exclude any deposits received in any office of the bank for deposit in any other office of the bank: *And provided further,* That outstanding drafts (including advices and authorizations to charge bank's balance in another bank) drawn in the regular course of business by the reporting bank on banks need not be reported as deposit liabilities. The amount of trust funds held in the bank's own trust department, which the reporting bank keeps segregated and apart from its general assets and does not use in the conduct of its business, shall not be included in the total deposits in such reports, but shall be separately stated in such reports. Deposits which are accumulated for the payment of personal loans and are assigned or pledged to assure payment of loans at maturity shall not be included in the total deposits in such reports, but shall be deducted from the loans for which such deposits are assigned or pledged to assure repayment.

(5) The deposits to be reported on such reports of condition shall be segregated between (i) time and savings deposits and (ii) demand deposits. For this purpose and for the computation of assessments provided in subsection (b) of this section, the time and savings deposits shall consist of time certificates of deposit, time deposits-open account, and savings deposits; and demand deposits shall consist of all deposits other than time and savings deposits.

[*See main edition for text of* (6)]

(7) In respect of any report required or authorized to be supplied or published pursuant to this subsection or any other provision of law, the Board of Directors or the Comptroller of the Currency, as the case may be, may differentiate between domestic banks and foreign banks to such extent as, in their judgment, may be reasonably required to avoid hardship and can be done without substantial compromise of insurance risk or supervisory and regulatory effectiveness.

(b) Computation of assessments; rate and amount; base; additions and deductions; records; definitions

[*See main edition for text of (1) to (3)*]

(4)(A) Except as provided in subparagraph (B) of this paragraph, a bank's assessment base for any date shall be equal to the bank's liability for deposits (including the deposits of any other bank for which it has assumed liability) as reported in its report of condition for such date, plus the assessment base additions set forth in paragraph (5), and less the assessment base deductions set forth in paragraph (6).

(B) In determining the assessment base and assessment base additions and deductions of a foreign bank having an insured branch, such adjustments shall be made as the Board of Directors may by regulation prescribe in order to provide equitable treatment for domestic and foreign banks.

[*See main edition for text of (5)*]

(6) The assessment base deductions shall be the amounts of—

(A) cash items in the bank's possession, drawn on itself, which have not been charged against deposit liabilities at the close of business on the date as of which the report of condition is made, either in their actual amount as shown on the books of the bank, or, if not so shown, in an amount determined by means of an experience factor pursuant to regulations prescribed by the Board of Directors;

(B) 1 per centum of the bank's adjusted time and savings deposits (as defined in paragraph (7)); and

(C) 16⅔ per centum of the bank's adjusted demand deposits (as defined in paragraph (8)).

Each insured bank, as a condition to the right to make any such deduction in determining its assessment base, shall maintain such records as will readily permit verification of the correctness of its assessment base. No insured bank shall be required to retain such records for such purpose for a period in excess of five years from the date of the filing of any certified statement, except that when there is a dispute between the insured bank and the Corporation over the amount of any assessment the bank shall retain such records until final determination of the issue.

[*See main edition for text of (7) and (8); (c) to (i)*]

(j) Change in control of insured banks

(1) No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any insured bank through a purchase, assignment, transfer, pledge, or other disposition of voting stock of such insured bank unless the appropriate Federal banking agency has been given sixty days' prior written notice of such proposed acquisition and within that time period the agency has not issued a notice disapproving the proposed acquisition or extending for up to another thirty days the period during which such a disapproval may issue. The period for disapproval may be further extended only if the agency determines that any acquiring party has not furnished all the information required under paragraph (6) of this subsection or that in its judgment any material information submitted is substantially inaccurate. An acquisition may be made prior to expiration of the disapproval period if the agency issues written notice of its intent not to disapprove the action. For purposes of this subsection, the term "insured bank" shall include any "bank holding company", as that term is defined in section 1841 of this title, which has control of any such insured bank, and the appropriate Federal banking agency in the case of bank holding companies shall be the Board of Governors of the Federal Reserve System.

(2) Upon receiving any notice under this subsection, the appropriate Federal banking agency shall forward a copy thereof to the appropriate State bank supervisory agency if the bank the voting shares of which are sought to be acquired is a State bank, and shall allow thirty days within which the views and recommendations of such State bank supervisory agency may be submitted. The appropriate Federal banking agency shall give due consideration to the views and recommendations of such State agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this paragraph, if the appropriate Federal banking agency determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the probable failure of the bank involved in the proposed acquisition, such Federal banking agency may dispense with the requirements of this paragraph or, if a copy of the notice is forwarded to the State bank supervisory agency, such Federal banking agency may request that the views and recommendations of such State bank supervisory agency be submitted immediately in any form or by any means acceptable to such Federal banking agency.

(3) Within three days after its decision to disapprove any proposed acquisition, the appropriate Federal banking agency shall notify the acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for the disapproval.

(4) Within ten days of receipt of such notice of disapproval, the acquiring party may request an agency hearing on the proposed acquisition. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The length of the hearing shall be determined by the appropriate Federal banking agency. At the conclusion thereof, the appropriate Federal banking agency shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

(5) Any person whose proposed acquisition is disapproved after agency hearings under this subsection may obtain review by the United States court of appeals for the circuit in which the home office of the bank to be acquired is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days

from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the disapproval was based. The findings of the appropriate Federal banking agency shall be set aside if found to be arbitrary or capricious or if found to violate procedures established by this subsection.

(6) Except as otherwise provided by regulation of the appropriate Federal banking agency, a notice filed pursuant to this subsection shall contain the following information:

(A) The identity, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a State or Federal court.

(B) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than ninety days prior to the date of the filing of the notice.

(C) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.

(D) The identity, source and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons.

(E) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank, to sell its assets or merge it with any company or to make any other major change in its business or corporate structure or management.

(F) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation.

(G) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

(H) Any additional relevant information in such form as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular notice.

(7) The appropriate Federal banking agency may disapprove any proposed acquisition if—

(A) the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monoplize [1] or to attempt to monopolize the business of banking in any part of the United States;

(B) the effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(C) the financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(D) the competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit such person to control the bank; or

(E) any acquiring person neglects, fails, or refuses to furnish the appropriate Federal banking agency all the information required by the appropriate Federal banking agency.

(8) For the purposes of this subsection, the term—

(A) "person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein; and

(B) "control" means the power, directly or indirectly, to direct the management or policies of an insured bank or to vote 25 per centum or more of any class of voting securities of an insured bank.

(9) Whenever any insured bank makes a loan or loans, secured, or to be secured, by 25 per centum or more of the outstanding voting stock of an insured bank, the president or other chief executive officer of the lending bank shall promptly report such fact to the appropriate Federal banking agency of the bank whose stock secures the loan or loans upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year or more or where the stock is that of the newly organized bank prior to its opening.

(10) The reports required by paragraph (9) of this subsection shall contain such of the infor-

[1] So in original. Probably should be "monopolize".

mation referred to in paragraph (6) of this subsection, and such other relevant information, as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular report.

(11) The Federal banking agency receiving a notice or report filed pursuant to paragraph (1) or (9) shall immediately furnish to the other Federal banking agencies a copy of such notice or report.

(12) Whenever such a change in control occurs, each insured bank shall report promptly to the appropriate Federal banking agency any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(13) The appropriate Federal banking agencies are authorized to issue rules and regulations to carry out this subsection.

(14) Within two years after the effective date of the Change in Bank Control Act of 1978, and each year thereafter in each appropriate Federal banking agency's annual report to the Congress, the appropriate Federal banking agency shall report to the Congress the results of the administration of this subsection, and make any recommendations as to changes in the law which in the opinion of the appropriate Federal banking agency would be desirable.

(15) Any person who willfully violates any provision of this subsection, or any regulation or order issued by the appropriate Federal banking agency pursuant thereto, shall forfeit and pay a civil penalty of not more than $10,000 per day for each day during which such violation continues. The appropriate Federal banking agency shall have authority to assess such a civil penalty, after giving notice and an opportunity to the person to submit data, views, and arguments, and after giving due consideration to the appropriateness of the penalty with respect to the size of financial resources and good faith of the person charged, the gravity of the violation, and any data, views, and arguments submitted. The agency may collect such civil penalty by agreement with the person or by bringing an action in the appropriate United States district court, except that in any such action, the person against whom the penalty has been assessed shall have a right to trial de novo.

(16) This subsection shall not apply to a transaction subject to section 1842 or section 1828 of this title.

(k) Annual report to Federal banking agency

(1) Each insured bank shall make to the appropriate Federal banking agency an annual report which shall contain the following information with respect to the preceding calendar year:

(A) A list by name of each stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of the bank.

(B) A list by name of each executive officer or stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of the bank and the aggregate amount of all extensions of credit by such bank during such year to: (i) such executive officers or stockholders of record, (ii) any company controlled by such executive officers, or stockholders, or (iii) any political or campaign committee the funds or services of which will benefit such executive officers or stockholders, or which is controlled by such executive officers or stockholders.

(2) For purposes of this subsection, the term "executive officer" shall have the same meaning given it under section 375a of this title.

(3) The appropriate Federal banking agencies are authorized to issue rules and regulations to carry out this subsection, including authority to incorporate the information required to be filed by this subsection in any other report required to be filed by all insured banks which would be available in its entirety to the public upon request.

(4) Copies of any report required to be filed under this subsection shall be made available, by the appropriate Federal banking agency or by the bank, upon request, to the public.

(As amended Sept. 17, 1978, Pub. L. 95-369, § 6(c)(8)-(13), 92 Stat. 617, 618; Nov. 10, 1978, Pub. L. 95-630, title III, §§ 302, 310, title VI, § 602, title IX, § 901, 92 Stat. 3676, 3678, 3683, 3693.)

REFERENCES IN TEXT

For effective date of the Change in Bank Control Act of 1978 [title VI of Pub. L. 95-630], referred to in subsec. (j)(14), see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-369, § 6(c)(8), added "and each foreign bank having an insured branch which is not a Federal branch" following "(except a District bank)".

Subsec. (a)(3). Pub. L. 95-630, § 302, substituted "the signatures of at least two directors or trustees of the reporting bank other than the officer making such declaration" for "the signatures of at least three of the directors or trustees of the reporting bank other than the officer making such declaration, or by at least two if there are not more than three directors or trustees".

Pub. L. 95-369, § 6(c)(9), added "and each foreign bank having an insured branch (other than a Federal branch)" following "(except a District Bank)" and "each foreign bank having an insured branch which is a Federal branch" following "each insured national bank".

Subsec. (a)(4). Pub. L. 95-630, § 310(a), added provision that deposits which are accumulated for the payment of personal loans and are assigned or pledged to assure payment of loans at maturity not be included in the total deposits in such reports, but shall be deducted from the loans for which such deposits are assigned or pledged to assure repayment.

Subsec. (a)(5). Pub. L. 95-630, § 310(b), struck out "deposits accumulated for the payment of personal loans," following "deposit-open account,".

Subsec. (a)(7). Pub. L. 95-369, § 6(c)(10), added subsec. (a)(7).

Subsec. (b)(4). Pub. L. 95-369, § 6(c)(11), designated existing provisions as subpar. (A), and in subpar. (A) as so designated, substituted "Except as provided in

subparagraph (B) of this paragraph, a bank's assessment base" for "A bank's assessment base", and added subpar. (B).

Subsec. (b)(6). Pub. L. 95-630, § 310(c), redesignated former subpars. (C) and (D) as (B) and (C) and struck out former subpar. (B), which related to deposits included in reported deposit liabilities which are accumulated for the payment of personal loans and are assigned or pledged to assure repayment of the loans at maturity.

Subsec. (j). Pub. L. 95-630, § 602, substituted provisions relating to the requirement that no person shall acquire control of any insured bank unless the appropriate Federal agency is notified 60 days prior to such transfer and authorizing the appropriate Federal agency to approve or disapprove such transfer for provisions relating to the requirement that notification of a transfer of control of an insured bank be given to the appropriate Federal agency after such transfer.

Subsec. (j)(1). Pub. L. 95-369, § 6(c)(12), designated existing provision as subpar. (A), and in subpar. (A) as so designated, substituted "Except as provided in subparagraph (B) of this paragraph, whenever" for "Whenever", and added subpar. (B).

Subsec. (j)(2). Pub. L. 95-369, § 6(c)(13), designated existing provisions as subpar. (A), and in subpar. (A) as so designated, substituted "Except as provided in subparagraph (B) of this paragraph, whenever" for "Whenever", and added subpars. (B) and (C).

Subsec. (k). Pub. L. 95-630, § 901, added subsec. (k).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

SHORT TITLE OF 1978 AMENDMENT

For short title of title VI of Pub. L. 95-630 as the "Change in Bank Control Act of 1978", see section 601 of Pub. L. 95-630, set out as a Short Title of 1978 Amendment note under section 1811 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 375a, 1813, 1972 of this title.

§ 1818. Termination of status as insured bank

(a) Notice by bank of intention; citation of bank for unsound practices or violations; hearings; judicial review

Any insured bank (except a national member bank, a foreign bank having an insured branch which is a Federal branch, a foreign bank having an insured branch which is required to be insured under section 3104(a) or (b) of this title, or State member bank) may, upon not less than ninety days' written notice to the Corporation, terminate its status as an insured bank. Whenever the Board of Directors shall find that an insured bank or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such bank, or is in an unsafe or unsound condition to continue operations as an insured bank, or violated an applicable law, rule, regulation or order, or any condition imposed in writing by the Corporation in connection with the granting of any application or other request by the bank, or any written agreement entered into with the Corporation the Board of Directors shall first give to the Comptroller of the Currency in the case of a national bank or a district bank, to the authority having supervision of the bank in the case of a State bank, and to the Board of Governors of the Federal Reserve System in the case of a State member bank, a statement with respect to such practices or violations for the purpose of securing the correction thereof and shall give a copy thereof to the bank. Unless such correction shall be made within one hundred and twenty days, or such shorter period not less than twenty days fixed by the Corporation in any case where the Board of Directors in its discretion has determined that the insurance risk of the Corporation is unduly jeopardized, or fixed by the Comptroller of the Currency in the case of a national bank, or the State authority in the case of a State bank, or Board of Governors of the Federal Reserve System in the case of a State member bank as the case may be, the Board of Directors, if it shall determine to proceed further, shall give to the bank not less than thirty days' written notice of intention to terminate the status of the bank as an insured bank, and shall fix a time and place for a hearing before the Board of Directors or before a person designated by it to conduct such hearing, at which evidence may be produced, and upon such evidence the Board of Directors shall make written findings which shall be conclusive. If the Board of Directors shall find that any unsafe or unsound practice or condition or violation specified in such statement has been established and has not been corrected within the time above prescribed in which to make such corrections, the Board of Directors may order that the insured status of the bank be terminated on a date subsequent to such finding and to the expiration of the time specified in such notice of intention. Unless the bank shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured bank and termination of such status thereupon may be ordered. Any insured bank whose insured status has been terminated by order of the Board of Directors under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (h) of this section. The Corporation may publish notice of such termination and the bank shall give notice of such termination to each of its depositors at his last address of record on the books of the bank, in such manner and at such time as the Board of Directors may find to be necessary and may order for the protection of depositors. After the termination of the insured status of any bank under the provisions of this subsection, the insured deposits of each depositor in the bank on the date of such termination, less all subsequent withdrawals from any deposits of such depositor, shall continue for a period of two years to be insured, and the bank shall continue to pay to the Corporation assessments as in the case of an insured bank during such period. No additions to any such deposits and no new deposits in such bank made after the date of such termination shall be insured by the Corporation, and the bank shall not advertise or hold itself out as having insured deposits unless in the same connection it shall also state with equal prominence that such additions to deposits and new deposits made after

such date are not so insured. Such bank shall, in all other respects, be subject to the duties and obligations of an insured bank for the period of two years from the date of such termination, and in the event that such bank shall be closed on account of inability to meet the demands of its depositors within such period of two years, the Corporation shall have the same powers and rights with respect to such bank as in case of an insured bank.

(b) Cease-and-desist proceedings

(1) If, in the opinion of the appropriate Federal banking agency, any insured bank, bank which has insured deposits, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such a bank is engaging or has engaged, or the agency has reasonable cause to believe that the bank or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank is about to engage, in an unsafe or unsound practice in conducting the business of such bank, or is violating or has violated, or the agency has reasonable cause to believe that the bank or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank is about to violate, a law, rule, or regulation, or any condition imposed in writing by the agency in connection with the granting of any application or other request by the bank or any written agreement entered into with the agency, the agency may issue and serve upon the bank or such director, officer, employee, agent, or other person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the bank or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the agency at the request of any party so served. Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the agency shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the agency may issue and serve upon the bank or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the bank or its directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such bank to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the bank or other person concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(3) This subsection and subsections (c) through (f) and (h) through (n) of this section shall apply to any bank holding company, and to any subsidiary (other than a bank) of a bank holding company, as those terms are defined in the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and to any organization organized and operated under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.] or operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.], in the same manner as they apply to a State member insured bank. Nothing in this subsection or in subsection (c) of this section shall authorize any Federal banking agency, other than the Board of Governors of the Federal Reserve System, to issue a notice of charges or cease-and-desist order against a bank holding company or any subsidiary thereof (other than a bank or subsidiary of that bank).

(4) This subsection and subsections (c), (d), (h), (i), (k), (*l*), (m), and (n) of this section shall apply to any foreign bank or company to which subsection (a) of section 3106 of this title applies and to any subsidiary (other than a bank) of any such foreign bank or company in the same manner as they apply to a bank holding company and any subsidiary thereof (other than a bank) under subparagraph (3) of this subsection. For the purposes of this subparagraph, the term "subsidiary" shall have the meaning assigned to it in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841].

(c) Temporary cease-and-desist orders

(1) Whenever the appropriate Federal banking agency shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the bank or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank pursuant to paragraph (1) of subsection (b) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the bank, or is likely to seriously weaken the condition of the bank or otherwise seriously prejudice the interests of its depositors prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (b) of this section, the agency may issue a temporary order requiring the bank or such director, officer, employee, agent, or other person to cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order shall become effective upon service upon the bank or such director, officer, employee, agent, or other

person participating in the conduct of the affairs of such bank and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the bank or such director, officer, employee, agent, or other person, until the effective date of such order.

(2) Within ten days after the bank concerned or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank has been served with a temporary cease-and-desist order, the bank or such director, officer, employee, agent, or other person may apply to the United States district court for the judicial district in which the home office of the bank is located, or the United States District Court for the District of Columbia, for an injuction [1] setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the bank or such director, officer, employee, agent, or other person under paragraph (1) of subsection (b) of this section, and such court shall have jurisdiction to issue such injunction.

[*See main edition for text of (d)*]

(e) Suspension or removal of director or officer

(1) Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured bank has committed any violation of law, rule, or regulation or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the bank, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the agency determines that the bank has suffered or will probably suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty or that the director or office [2] has received financial gain by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, or one which demonstrates a willful or continuing disregard for the safety or soundness of the bank, the agency may serve upon such director or officer a written notice of its intention to remove him from office.

(2) Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured bank, by conduct or practice with respect to another insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to continue as a director or officer and, whenever, in the opinion of the appropriate Federal banking agency, any other person participating in the conduct of the affairs of an insured bank, by conduct or practice with respect to such bank or other insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to participate in the conduct of the affairs of such insured bank, the agency may serve upon such director, officer, or other person a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the bank.

(3) In respect to any director or officer of an insured bank or any other person referred to in paragraph (1) or (2) of this subsection, the appropriate Federal banking agency may, if it deems it necessary for the protection of the bank or the interests of its depositors, by written notice to such effect served upon such director, officer, or other person, suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the bank. Such suspension or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (f) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraph (1) or (2) of this subsection and until such time as the agency shall dismiss the charges specified in such notice, or, if an order of removal or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the bank of which he is a director or officer or in the conduct of whose affairs he has participated.

(4) A notice of intention to remove a director, officer, or other person from office or to prohibit his participation in the conduct of the affairs of an insured bank, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the agency at the request of (A) such director or officer or other person, and for good cause shown, or (B) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the agency shall find that any of the grounds specified in such notice have been established, the agency may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the

[1] So in original. Probably should be "injunction".
[2] So in original. Probably should be "officer".

affairs of the bank, as it may deem appropriate. In any action brought under this section by the Comptroller of the Currency in respect to any director, officer or other person with respect to a national banking association or a District bank, the findings and conclusions of the Administrative Law Judge shall be certified to the Board of Governors of the Federal Reserve System for the determination of whether any order shall issue. Any such order shall become effective at the expiration of thirty days after service upon such bank and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(5) For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term "officer" as used in this subsection means an employee or officer with management functions, and the term "director" includes an advisory or honorary director, a trustee of a bank under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

[*See main edition for text of (f)*]

(g) Suspension or removal of director or officer charged with felony

(1) Whenever any director or officer of an insured bank, or other person participating in the conduct of the affairs of such bank, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the appropriate Federal banking agency may, if continued service or participation by the individual may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank, by written notice served upon such director, officer, or other person, suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the bank. A copy of such notice shall also be served upon the bank. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the agency. In the event that a judgment of conviction with respect to such crime is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the agency may, if continued service or participation by the individual may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank, issue and serve upon such director, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the bank except with the consent of the appropriate agency. A copy of such order shall also be served upon such bank, whereupon such director or officer shall cease to be a director or officer of such bank. A finding of not guilty or other disposition of the charge shall not preclude the agency from thereafter instituting proceedings to remove such director, officer, or other person from office or to prohibit further participation in bank affairs, pursuant to paragraph (1), (2), or (3) of subsection (e) of this section. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the agency.

(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a national bank less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a national bank are suspended pursuant to this section, the Comptroller of the Currency shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the bank and their respective successors take office.

(3) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the director, officer, or other person concerned may request in writing an opportunity to appear before the agency to show that the continued service to or participation in the conduct of the affairs of the bank by such individual does not, or is not likely to, pose a threat to the interests of the bank's depositors or threaten to impair public confidence in the bank. Upon receipt of any such request, the appropriate Federal banking agency shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of the concerned director, officer, or other person) and place at which the director, officer, or other person may appear, personally or through counsel, before one or more members of the agency or designated employees of the agency to submit written materials (or, at the discretion of the agency, oral testimony) and oral argument. Within sixty days of such hearing, the agency shall notify the director, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the bank will be continued, terminated, or otherwise modified, or whether the order removing said director, officer or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the bank will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the agency's decision, if adverse to the director, officer or other person. The Federal banking agencies are authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(h) Hearings and judicial review

(1) Any hearing provided for in this section (other than the hearing provided for in subsection (g)(3) of this section) shall be held in the Federal judicial district or in the territory in which the home office of the bank is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5. Such hearing shall be private, unless the appropriate Federal banking agency, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After such hearing, and within ninety days after the appropriate Federal banking agency or Board of Governors of the Federal Reserve System has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (h). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the issuing agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the agency may modify, terminate, or set aside any such order with permission of the court.

[See main edition for text of (2) and (3)]

(i) Jurisdiction and enforcement; penalty

(1) The appropriate Federal banking agency may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the bank is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such courts shall have jurisdiction and power to order and require compliance herewith; but except as otherwise provided in this section no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(2)(i) Any insured bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such a bank who violates the terms of any order which has become final and was issued pursuant to subsection (b) or (c) of this section, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the appropriate Federal banking agency by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(ii) In determining the amount of the penalty the appropriate Federal banking agency shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the insured bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(iii) The insured bank or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (iv). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(iv) Any insured bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the insured bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The agency shall promptly certify and file in such Court the record upon which the penalty was imposed, as provided in section 2112 of title 28. The findings of the agency shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5.

(v) If any insured bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the agency shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(vi) Each Federal banking agency shall promulgate regulations establishing procedures necessary to implement this paragraph.

(vii) All penalties collected under authority of this section shall be covered into the Treasury of the United States.

(j) Penalties

Any director or officer, or former director or officer of an insured bank, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under subsections (e)(3), (e)(4), or (g) of this section, and who (i) participates in any manner in the conduct of the affairs of the bank involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such bank, or (ii) without the prior written ap-

proval of the appropriate Federal banking agency, votes for a director, serves or acts as a director, officer, or employee of any bank, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.

(k) Definitions

As used in this section (1) the terms "cease-and-desist order which has become final" and "order which has become final" mean a cease-and-desist order, or an order, issued by the appropriate Federal banking agency with the consent of the bank or the director or officer or other person concerned, or with respect to which no petition for review of the action of the agency has been filed and perfected in a court of appeals as specified in paragraph (2) of subsection (h) of this section, or with respect to which the action of the court in which said petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in said paragraph, or an order issued under paragraph (1) or (3) of subsection (g) of this section, and (2) the term "violation" includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

[*See main edition for text of* (l) *and* (m)]

(n) Ancillary provisions; subpena power, etc.

In the course of or in connection with any proceeding under this section, or in connection with any claim for insured deposits or any examination or investigation under section 1820(c) of this title, the agency conducting the proceeding, examination, or investigation or considering the claim for insured deposits, or any member or designated representative thereof, including any person designated to conduct any hearing under this section, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and such agency is empowered to make rules and regulations with respect to any such proceedings, claims, examinations, or investigations. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any such agency or any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an insured bank or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the bank or from its assets. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the appropriate Federal banking agency, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year or both.

[*See main edition for text of* (o) *and* (p)]

(q) Assumption of liabilities

Whenever the liabilities of an insured bank for deposits shall have been assumed by another insured bank or banks, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract (1) the insured status of the bank whose liabilities are so assumed shall terminate on the date of receipt by the Corporation of satisfactory evidence of such assumption; (2) the separate insurance of all deposits so assumed shall terminate at the end of six months from the date such assumption takes effect or, in the case of any time deposit, the earliest maturity date after the six-month period; and (3) the assuming or resulting bank shall give notice of such assumption to each of the depositors of the bank whose liabilities are so assumed within thirty days after such assumption takes effect. Where the deposits of an insured bank are assumed by a newly insured bank, the bank whose deposits are assumed shall not be required to pay any assessment upon the deposits which have been so assumed after the semiannual period in which the assumption takes effect.

(r) Action or proceeding against foreign bank; basis; removal of officer or other person; venue; service of process

(1) Except as otherwise specifically provided in this section, the provisions of this section shall be applied to foreign banks in accordance with this subsection.

(2) An act or practice outside the United States on the part of a foreign bank or any officer, director, employee, or agent therof[1] may not constitute the basis for any action by any officer or agency of the United States under this section, unless—

(A) such officer or agency alleges a belief that such act or practice has been, is, or is likely to be a cause of or carried on in connection with or in furtherance of an act or practice within any one or more States which, in and of itself, would constitute an appropriate basis for action by a Federal officer or agency under this section; or

(B) the alleged act or practice is one which, if proven, would, in the judgment of the Board of Directors, adversely affect the insurance risk assumed by the Corporation.

[1] So in original. Probably should be "thereof".

(3) In any case in which any action or proceeding is brought pursuant to an allegation under paragraph (2) of this subsection for the suspension or removal of any officer, director, or other person associated with a foreign bank, and such person fails to appear promptly as a party to such action or proceeding and to comply with any effective order or judgment therein, any failure by the foreign bank to secure his removal from any office he holds in such bank and from any further participation in its affairs shall, in and of itself, constitute grounds for termination of the insurance of the deposits in any branch of the bank.

(4) Where the venue of any judicial or administrative proceeding under this section is to be determined by reference to the location of the home office of a bank, the venue of such a proceeding with respect to a foreign bank having one or more branches or agencies in not more than one judicial district or other relevant jurisdiction shall be within such jurisdiction. Where such a bank has branches or agencies in more than one such jurisdiction, the venue shall be in the jurisdiction within which the branch or branches or agency or agencies involved in the proceeding are located, and if there is more than one such jurisdiction, the venue shall be proper in any such jurisdiction in which the proceeding is brought or to which it may appropriately be transferred.

(5) Any service required or authorized to be made on a foreign bank may be made on any branch or agency located within any State, but if such service is in connection with an action or proceeding involving one or more branches or one or more agencies located in any State, service shall be made on at least one branch or agency so involved.

(As amended Sept. 17, 1978, Pub. L. 95-369, §§ 6(c)(14), (15), 11, 92 Stat. 618, 624; Nov. 10, 1978, Pub. L. 95-630, title I, §§ 107(a)(1), (b), (c)(1), (d)(1), (e)(1), 111(a), title II, § 208(a), title III, §§ 303, 304, 92 Stat. 3649, 3653, 3654, 3656, 3660, 3665, 3674, 3676.)

REFERENCES IN TEXT

Section 25A of the Federal Reserve Act, referred to in subsec. (b)(3), probably refers to section 25(a) of that Act which is classified to subchapter II (§ 611 et seq.) of chapter 6 of this title. Section 25 of the Federal Reserve Act is classified to subchapter I (§ 601 et seq.) of chapter 6 of this title.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-369, § 6(c)(14), added "a foreign bank having an insured branch which is a Federal branch, a foreign bank having an insured branch which is required to be insured under section 3104(a) or (b) of this title" after "(except a national member bank".

Subsec. (b)(1), (2). Pub. L. 95-630, § 107(a)(1), extended coverage of par. (1) to include directors, officers, employees, agents, or other persons participating in the conduct of the affairs of an insured bank or a bank which has insured deposits, and reenacted par. (2) without change.

Subsec. (b)(3). Pub. L. 95-630, § 107(b), substituted "subsections (c) through (f) and (h) through (n) of this section" for "subsections (c), (d), (h), (i), (k), (l), (m), and (n) of this section" and added provisions relating to any organization organized and operated under section 25A of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act and provisions relating to the issuance of a notice of charges or cease-and-desist order against a bank holding company or subsidiary by any Federal banking agency other than the Board of Governors of the Federal Reserve System.

Subsec. (b)(4). Pub. L. 95-369, § 11, added subsec. (b)(4).

Subsec. (c). Pub. L. 95-630, § 107(c)(1), in pars. (1) and (2) added references to any director, officer, employee, agent, or other person participating in the conduct of the affairs of the bank and in par. (1) inserted "prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (b) of this section" following "interests of its depositors" and "and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings" following "violation or practice".

Subsec. (e). Pub. L. 95-630, §§ 107(d)(1), 208(a), generally revised and condensed the provisions relating to the suspension and removal of bank directors and officers, consolidated procedures relating to the certification of facts to the Board of Governors of the Federal Reserve System by the Comptroller of the Currency, substituted references to insured banks for references to insured State banks (other than a District Bank), and added provisions defining "officer" and "director" for the purpose of enforcing any law, rule, etc., in connection with an interlocking relationship.

Subsec. (g). Pub. L. 95-630, § 111(a)(1), among other changes, inserted in par. (1) ", if continued service or participation by the individual may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank" following "agency may" in two places, added provision that any notice of suspension or order of removal issued under this paragraph remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the agency, and added par. (3).

Subsec. (h)(1). Pub. L. 95-630, § 111(a)(2), inserted "(other than the hearing provided for in subsection (g)(3) of this section)" following "provided for in this section".

Subsec. (i). Pub. L. 95-630, § 107(e)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (j). Pub. L. 95-630, § 111(a)(3), substituted "subsections (e)(3), (e)(4)" for "subsections (e)(5), (e)(7), (e)(8)".

Subsec. (k). Pub. L. 95-630, § 111(a)(4), substituted "paragraph (1) or (3) of subsection (g)" for "paragraph (1) of subsection (g)".

Subsec. (n). Pub. L. 95-630, § 111(a)(5), added provision creating a criminal penalty for a willful failure or refusal to attend and testify or to answer any lawful inquiry or to produce books, papers, etc. in obedience to the subpoena of the appropriate Federal banking agency.

Pub. L. 95-630, § 303, inserted "or in connection with any claim for insured deposits or any examination or investigation under section 1820(c) of this title," following "proceeding under this section,", "examination, or investigation or considering the claim for insured deposits," following "conducting the proceeding,", and "such agency or any" preceding "party to proceedings" and substituted "any such proceedings, claims, examinations, or investigations" for "any such proceedings" and "subpenaed under this subsection" for "subpenaed under this section".

Subsec. (q). Pub. L. 95-630, § 304, among other changes, substituted provisions requiring the assuming or resulting bank to give notice of an assumption to each of the depositors of the bank whose liabilities are so assumed within thirty days after such assumption takes effect for provisions requiring the bank whose liabilities are being assumed to give notice of such assumption to its depositors within thirty days after such assumption takes effect, by publication or by any reasonable means, in accordance with regulations to be prescribed by the Board of Directors.

Subsec. (r). Pub. L. 95-369, § 6(c)(15), added subsec. (r).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630, except for amendment of subsec. (i) by section 107(e)(1) of such act, effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630 set out as an Effective Date note under section 375b of this title.

Amendment of subsec. (i) by section 107(e)(1) of Pub. L. 95-630, relating to imposition of civil penalties, applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 93 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 375a, 1813, 1820, 1831b, 1831c, 2804, 2805, 3108 of this title; title 15 sections 57a, 78o–4, 78q–1, 1607, 1681s, 1691c, 1692*l*, 1693o.

§ 1819. Incorporation; powers; seal

Upon June 16, 1933, the Corporation shall become a body corporate and as such shall have power—

[*See main edition for text of pars. first to ninth*]

Tenth. To prescribe by its Board of Directors such rules and regulations as it may deem necessary to carry out the provisions of this chapter or of any other law which it has the responsibility of administering or enforcing (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency).

(As amended Nov. 10, 1978, Pub. L. 95-630, title III, § 309, 92 Stat. 3677.)

AMENDMENTS

1978—Pub. L. 95-630 in par. Tenth inserted "or of any other law which it has the responsibility of administering or enforcing (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency)" following "provisions of this chapter".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5373.

§ 1820. Administration of Corporation

[*See main edition for text of* (a)]

(b) Appointment of examiners and claim agents; powers and duties

The Board of Directors shall appoint examiners who shall have power, on behalf of the Corporation, to examine any insured State nonmember bank (except a District bank) any insured State branch of a foreign bank, any State branch of a foreign bank making application to become an insured bank, any State nonmember bank or other institution making application to become an insured bank, and any closed insured bank or branch, whenever in the judgment of the Board of Directors an examination of the bank is necessary. In addition to the examinations provided for in the preceding sentence, such examiners shall have like power to make a special examination of any State member bank and any national bank, insured Federal branch of a foreign bank, or District bank, whenever in the judgment of the Board of Directors such special examination is necessary to determine the condition of any such bank for insurance purposes. In making examinations of insured banks, examiners appointed by the Corporation shall have power on behalf of the Corporation to make such examinations of the affairs of all affiliates of such banks as shall be necessary to disclose fully the relations between such banks and their affiliates and the effect of such relations upon such banks, and in the case of a foreign bank, a binding commitment by such bank to permit such examination to the extent determined by the Board of Directors to be necessary to carry out the purposes of this chapter shall be required as a condition to the insurance of any deposits. Each examiner shall have power to make a thorough examination of all of the affairs of the bank and its affiliates, and shall make a full and detailed report of the condition of the bank to the Corporation. The Board of Directors in like manner shall appoint claim agents who shall have power to investigate and examine all claims for insured deposits.

(c) Administration of oaths and affirmations; evidence; subpena powers

In connection with examinations of insured banks, State nonmember banks or other institutions making application to become insured banks, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, the appropriate Federal banking agency, or its designated representatives, are authorized to administer oaths and affirmations, and to examine and to take and preserve testimony under oath as to any matter in respect to the affairs or ownership of any such bank or institution or affiliate thereof, and to exercise such other powers as are set forth in section 1818(n) of this title.

(d) Affiliate and member bank defined

For purposes of this section, the term "affiliate" shall have the same meaning as in section 371c of this title, except that the term "member bank" in such section 371c of this title and in section 221a(b) of this title shall be deemed to refer to an insured bank.

[*See main edition for text of* (e)]

(As amended Sept. 17, 1978, Pub. L. 95-369, § 6(c)(16), 92 Stat 619; Nov. 10, 1978, Pub. L. 95-630, title III, § 305, 92 Stat. 3677.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-630, § 305(a), inserted "or other institution" following "any State nonmember bank" and struck out provisions that each claim agent have power to administer oaths and affirmations and to examine and to take and preserve testimony under oath as to any matter in respect to claims for insured deposits, and to issue subpenas and subpenas duces tecum, and, for the enforcement thereof, to apply to the United States district court for the ju-

dicial district or the United States court in any territory in which the main office of the bank or affiliate thereof is located, or in which the witness resides or carriers on business and that such courts have jurisdiction and power to order and require compliance with any such subpena.

Pub. L. 95-369 added "any insured State branch of a foreign bank, any State branch of a foreign bank making application to become an insured bank" following "(except a District bank)", added "or branch" following "and any closed insured bank", substituted "any national bank, insured Federal branch of a foreign bank, or District bank" for "any national bank or District bank" and added "and in the case of a foreign bank, a binding commitment by such bank to permit such examination to the extent determined by the Board of Directors to be necessary to carry out the purposes of this chapter shall be required as a condition to the insurance of any deposits" following "effect of such relations upon such banks".

Subsec. (c). Pub. L. 95-630, § 305(b), among other changes, inserted references to State nonmember banks, other institutions making application to become insured banks, and investigations to determine compliance with applicable law and regulations and struck out provisions defining "affiliate" and "member bank".

Subsec. (d). Pub. L. 95-630, § 305(b), substituted provisions defining the terms "affiliate" and "member bank" for provisions relating to the enforcement of subpenas and orders.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

§ 1821. Permanent Insurance Fund

(a) Composition; amount of deposit insured; insurance of public funds; aggregate amount of public funds; insurance regarding pension or profit-sharing plans

[*See main edition for text of (1)*]

(2)(A) Notwithstanding any limitation in this chapter or in any other provision of law relating to the amount of deposit insurance available for the account of any one depositor, in the case of a depositor who is—

[*See main edition for text of (i) and (ii)*]

(iii) an officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured bank in the District of Columbia;

(iv) an officer, employee, or agent of the Commonwealth of Puerto Rico, of the Virgin Islands, of American Samoa, or of Guam, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured bank in the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or Guam, respectively; or

(v) an officer, employee, or agent of any Indian tribe (as defined in section 1452(c) of title 25) or agency thereof having official custody of tribal funds and lawfully investing or depositing the same in time and savings deposits in an insured bank;

his deposit shall be insured in an amount not to exceed $100,000 per account.

[*See main edition for text of (B)*]

(3) Notwithstanding any limitation in this chapter or in any other provision of law relating to the amount of deposit insurance available for the account of any one depositor, time and savings deposits in an insured bank made pursuant to a pension or profit-sharing plan described in section 401(d) of title 26, or made in the form of individual retirement accounts as described in section 408(a) of title 26, shall be insured in the amount of $100,000 per account. As to any plan qualifying under section 401(d) or section 408(a) of title 26, the term "per account" means the present vested and ascertainable interest of each beneficiary under the plan, excluding any remainder interest created by, or as a result of, the plan.

[*See main edition for text of (b)*]

(c) Corporation as receiver

Notwithstanding any other provision of law, whenever the Comptroller of the Currency shall appoint a receiver other than a conservator of any insured national bank, insured Federal branch of a foreign bank, or insured District bank, or of any noninsured national bank or District bank hereafter closed, he shall appoint the Corporation receiver for such closed bank.

[*See main edition for text of (d)*]

(e) Corporation as receiver of State banks

Whenever any insured State bank (except a District bank) or any insured branch (other than a Federal branch) of a foreign bank shall have been closed by action of its board of directors or by the authority having supervision of such bank, as the case may be, on account of inability to meet the demands of its depositors, the Corporation shall accept appointment as receiver thereof, if such appointment is tendered by the authority having supervision of such bank and is authorized or permitted by State law. With respect to any such insured State bank or insured branch of a foreign bank, the Corporation as such receiver shall possess all the rights, powers and privileges granted by State law to a receiver of a State bank.

(f) Payment of insured deposits

Whenever an insured bank or insured branch of a foreign bank shall have been closed on account of inability to meet the demands of its depositors, payment of the insured deposits in such bank shall be made by the Corporation as soon as possible, subject to the provisions of subsection (g) of this section either (1) by cash or (2) by making available to each depositor a transferred deposit in a new bank in the same community or in another insured bank in an amount equal to the insured deposit of such depositor: *Provided*, That the Corporation, in its discretion, may require proof of claims to be filed before paying the insured deposits, and that in any case where the Corporation is not satisfied as to the validity of a claim for an insured deposit, it may require the final determi-

nation of a court of competent jurisdiction before paying such claim.

(g) Subrogation

In the case of a closed national bank, insured branch of a foreign bank, or District bank, the Corporation, upon the payment to any depositor as provided in subsection (f) of this section, shall be subrogated to all rights of the depositor against the closed bank to the extent of such payment. In the case of any other closed insured bank, the Corporation shall not make any payment to any depositor until the right of the Corporation to be subrogated to the rights of such depositor on the same basis as provided in the case of a closed national bank under this chapter shall have been recognized either by express provision of State law, by allowance of claims by the authority having supervision of such bank, by assignment of claims by depositors, or by any other effective method. In the case of any closed insured bank or closed insured branch of a foreign bank, such subrogation shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of such closed bank and recoveries on account of stockholders' liability as would have been payable to the depositor on a claim for the insured deposit, but such depositor shall retain his claim for any uninsured portion of his deposit: *Provided,* That, with respect to any bank which closes after May 25, 1938, the Corporation shall waive, in favor only of any person against whom stockholders' individual liability may be asserted, any claim on account of such liability in excess of the liability, if any, to the bank or its creditors, for the amount unpaid upon his stock in such bank: but any such waiver shall be effected in such manner and on such terms and conditions as will not increase recoveries or dividends on account of claims to which the Corporation is not subrogated: *Provided further,* That the rights of depositors and other creditors of any State bank shall be determined in accordance with the applicable provisions of State law.

[*See main edition for text of (h) to (l)*]

(As amended Sept. 17, 1978, Pub. L. 95-369, § 6(c)(17)-(22), 92 Stat. 619; Nov. 10, 1978, Pub. L. 95-630, title XIV, § 1401(a), 92 Stat. 3712; Dec. 21, 1979, Pub. L. 96-153, title III, § 323(a), 93 Stat. 1120.)

AMENDMENTS

1979—Subsec. (a)(2)(A)(v). Pub. L. 96-153 added subsec. (a)(2)(A)(v).

1978—Subsec. (a)(3). Pub. L. 95-630 added subsec. (a)(3).

Subsec. (c). Pub. L. 95-369, § 6(c)(17), added "insured Federal branch of a foreign bank" following "any insured national bank".

Subsec. (e). Pub. L. 95-369, § 6(c) (18), (19), added "or any insured branch (other than a Federal branch) of a foreign bank" following "(except a District bank)", and substituted "such insured State bank or insured branch of a foreign bank" for "such insured State bank".

Subsec. (f). Pub. L. 95-369, § 6(c)(20), added "or insured branch of a foreign bank" following "Whenever an insured bank".

Subsec. (g). Pub. L. 95-369, § 6(c)(21), (22), added "insured branch of a foreign bank" following "In the case of a closed national bank", and substituted "In the case of any closed insured bank or closed insured branch of a foreign bank, such subrogation" for "In the case of any closed insured bank, such subrogation".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-153 applicable only to claims arising after Dec. 21, 1979, with respect to a closing of a bank, etc., see section 323(e) of Pub. L. 96-153, set out as an Effective Date of 1979 Amendment note under section 1728 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective Nov. 10, 1978, see section 1402 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 1728 of this title.

§ 1822. Corporation as receiver

(a) Bond; appointment of agents; payment of fees and expenses

Notwithstanding any other provision of law, the Corporation as receiver of a closed national bank, branch of a foreign bank, or District bank shall not be required to furnish bond and shall have the right to appoint an agent or agents to assist it in its duties as such receiver, and all fees, compensation, and expenses of liquidation and administration thereof shall be fixed by the Corporation, and may be paid by it out of funds coming into its possession as such receiver.

[*See main edition for text of (b) to (e)*]

(As amended Sept. 17, 1978, Pub. L. 95-369, § 6(c)(23), 92 Stat. 619.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-369 added "branch of a foreign bank" following "a closed national bank".

§ 1823. Corporation monies

[*See main edition for text of (a) to (f)*]

(g) Reopening or aversion of closing of insured branch of foreign bank

The powers conferred on the Board of Directors and the Corporation by this section to take action to reopen a closed insured bank or to avert the closing of an insured bank may be used with respect to an insured branch of a foreign bank if, in the judgment of the Board of Directors, the public interest in avoiding the closing of such branch substantially outweighs any additional risk of loss to the insurance fund which the exercise of such powers would entail.

(As amended Sept. 17, 1978, Pub. L. 95-369, § 6(c)(24), 92 Stat. 619.)

AMENDMENTS

1978—Subsec. (g). Pub. L. 95-369 added subsec. (g).

§ 1828. Regulations governing insured banks

[*See main edition for text of (a) and (b)*]

(c) Merger transactions; consent of banking agencies; emergency approval; notice; uniform standards; antitrust actions; review de novo; limitations; report to Congress

(1) Except with the prior written approval of the responsible agency, which shall in every

case referred to in this paragraph be the Corporation, no insured bank shall—

[*See main edition for text of (A)*]

(B) assume liability to pay any deposits (including liabilities which would be "deposits" except for the proviso in section 1813(*l*)(5) of this title) made in, or similar liabilities of, any noninsured bank or institution;

[*See main edition for text of (C); (2) to (10)*]

(11) The provisions of this subsection do not apply to any merger transaction involving a foreign bank if no party to the transaction is principally engaged in business in the United States.

(d) Branch banks

(1) No State nonmember insured bank (except a District bank) shall establish and operate any new domestic branch unless it shall have the prior written consent of the Corporation, and no State nonmember insured bank (except a District bank) shall move its main office or any such branch from one location to another without such consent. No foreign bank may move any insured branch from one location to another without such consent. The factors to be considered in granting or withholding the consent of the Corporation under this subsection shall be those enumerated in section 1816 of this title.

(2) No State nonmember insured bank shall establish or operate any foreign branch, except with the prior written consent of the Corporation and upon such conditions and pursuant to such regulations as the Corporation may prescribe from time to time.

[*See main edition for text of (e) and (f)*]

(g) Interest or dividend on demand deposits; definition; regulation of interest rates

(1) The Board of Directors shall by regulation prohibit the payment of interest or dividends on demand deposits in insured nonmember banks and in insured branches of foreign banks and for such purpose it may define the term "demand deposits"; but such exceptions from this prohibition shall be made as are now or may hereafter be prescribed with respect to deposits payable on demand in member banks by section 19 of the Federal Reserve Act, as amended, or by regulation of the Board of Governors of the Federal Reserve System. The Board of Directors may from time to time, after consulting with the Board of Governors of the Federal Reserve System and the Federal Home Loan Bank Board, prescribe rules governing the payment and advertisement of interest or dividends on deposits, including limitations on the rates of interest or dividends that may be paid by insured nonmember banks (including insured mutual savings banks) on time and savings deposits. The Board of Directors may prescribe different rate limitations for different classes of deposits, for deposits of different amounts or with different maturities or subject to different conditions regarding withdrawal or repayment, according to the nature or location of insured nonmember banks or their depositors, or according to such other reasonable bases as the Board of Directors may deem desirable in the public interest. The Board of Directors is authorized for the purposes of this subsection to define the terms "time deposits" and "savings deposits", to determine what shall be deemed a payment of interest, and to prescribe such regulations as it may deem necessary to effectuate the purposes of this subsection and to prevent evasions thereof. Such regulations shall prohibit any insured nonmember bank from paying any time deposit before its maturity except upon such conditions and in accordance with such rules and regulations as may be prescribed by the Board of Directors, and from waiving any requirement of notice before payment of any savings deposit except as to all savings deposits having the same requirement. The provisions of this subsection and of regulations issued thereunder shall also apply, in the discretion of the Board of Directors, to obligations other than deposits that are undertaken by insured nonmember banks or their affiliates. As used in this subsection, the term "affiliate" has the same meaning as when used in section 221a(b) of this title, except that the term "member bank", as used in such section 221a(b), shall be deemed to refer to an insured nonmember bank. For each violation of any provision of this subsection or any lawful provision of such regulations relating to the payment of interest or dividends on deposits or to withdrawal of deposits, the offending bank shall be subject to a penalty of not more than $100, which the Corporation may recover for its use. During the period commencing on October 15, 1962, and ending on October 15, 1968, the provisions of this subsection shall not apply to the rate of interest which may be paid by insured nonmember banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member. The authority conferred by this subsection shall also apply to noninsured banks in any State if the total amount of time and savings deposits held in all such banks in the State, plus the total amount of deposits, shares, and withdrawable accounts held in all building and loan, savings and loan, and homestead associations (including cooperative banks) in the State which are not members of a Federal home loan bank, is more than 20 per centum of the total amount of such deposits, shares, and withdrawable accounts held in all banks, and building and loan, savings and loan, and homestead associations (including cooperative banks) in the State. Such authority shall only be exercised by the Board of Directors with respect to such noninsured banks prior to July 31, 1970, to limit the rates of interest or dividends which such banks may pay on time and savings deposits to maximum rates not lower than 5½ per centum per annum. Whenever it shall appear to the Board of Directors that any noninsured bank or any affiliate thereof is engaged or has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this subsection or of any regulations thereunder, the Board of Di-

rectors may, in its discretion, bring an action in the United States district court for the judicial district in which the principal office of the noninsured bank or affiliate thereof is located to enjoin such acts or practices, to enforce compliance with this subsection or any regulations thereunder, or for a combination of the foregoing, and such courts shall have jurisdiction of such actions, and, upon a proper showing, an injunction, restraining order, or other appropriate order may be granted without bond.

(2) Notwithstanding the provisions of paragraph (1), an insured nonmember bank may permit withdrawals to be made automatically from a savings deposit that consists only of funds in which the entire beneficial interest is held by one or more individuals through payment to the bank itself or through transfer of credit to a demand deposit or other account pursuant to written authorization from the depositor to make such payments or transfers in connection with checks or drafts drawn upon the bank, pursuant to terms and conditions prescribed by the Board of Directors.

[*See main edition for text of (h) and (i)*]

(j) Provisions relating to loans, extensions of credit, and other dealings between member banks and their affiliates, executive officers, directors, etc., applicable to nonmember insured banks; penalty

(1) The provisions of section 371c of this title relating to loans and other dealings between member banks and their affiliates, shall be applicable to every nonmember insured bank in the same manner and to the same extent as if such nonmember insured bank were a member bank; and for this purpose any company which would be an affiliate of a nonmember insured bank, within the meaning of section 221a of this title and for the purposes of section 371c of this title, if such bank were a member bank shall be deemed to be an affiliate of such nonmember insured bank. The provisions of this subsection shall not apply to any foreign bank having an insured branch with respect to dealings between such bank and any affiliate thereof.

(2) The provisions of section 375b of this title, relating to limits on loans and extensions of credit by a member bank to its executive officers or directors or to any person who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, except in the case of such a bank located in a city, town, or village with less than thirty thousand in population, in which case such per centum shall be 18 per centum, or to companies controlled by such an executive officer, director, or person, or to political or campaign committees the funds or services of which will benefit such an officer, director, or person or which are controlled by such an officer, director, or person and relating to board of directors' approval of and terms of such loan, shall be applicable to every nonmember insured bank in the same manner and to the same extent as if such nonmember insured bank were a State member bank.

(3)(A) Any nonmember insured bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such nonmember insured bank who violates any provision of section 371c or 375b of this title, or any lawful regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Corporation by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(B) In determining the amount of the penalty the Corporation shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the member bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(C) The nonmember insured bank or person charged shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (D). If no hearing is requested as herein provided the assessment shall constitute a final and unappealable order.

(D) Any nonmember insured bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the member bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Corporation. The Corporation shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28. The findings of the Corporation shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5.

(E) If any nonmember insured bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Corporation shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(F) The Corporation shall promulgate regulations establishing procedures necessary to implement this paragraph.

(G) All penalties collected under the authority of this paragraph shall be covered into the Treasury of the United States.

(k) State usury ceilings inapplicable to certain obligations issued by insured nonmember banks and affiliates

No insured nonmember bank or affiliate thereof, or any successor or assignee of such bank or affiliate or any endorser, guarantor, or surety of such bank or affiliate may plead, raise, or claim, directly or by counterclaim, setoff, or otherwise, with respect to any deposit or obligation of such bank or affiliate, any defense, right, or benefit under any provision of a statute or constitution of a State or of a territory of the United States, or of any law of the District of Columbia, regulating or limiting the rate of interest which may be charged, taken, received, or reserved, and any such provision is hereby preempted, and no civil or criminal penalty which would otherwise be applicable under such provision shall apply to such bank or affiliate or to any other person.

(*l*) Aquisition of foreign banks or entities

When authorized by State law, a State nonmember insured bank may, but only with the prior written consent of the Corporation and upon such conditions and under such regulations as the Corporation may prescribe from time to time, acquire and hold, directly or indirectly, stock or other evidences of ownership in one or more banks or other entities organized under the law of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the Board of Directors, shall be incidental to the international or foreign business of such foreign bank or entity; and, notwithstanding the provisions of subsection (j) of this section, such State nonmember insured bank may, as to such foreign bank or entity, engage in transactions that would otherwise be covered thereby, but only in the manner and within the limit prescribed by the Corporation by general or specific regulation or ruling.

(As amended Sept. 17, 1978, Pub. L. 95-369, § 6(c)(25)-(28), 92 Stat. 620; Nov. 10, 1978, Pub. L. 95-630, title I, § 108, title III, §§ 301(b), (c), 306, 92 Stat. 3664, 3675, 3677; Nov. 5, 1979, Pub. L. 96-104, title II, § 202, 93 Stat. 792; Dec. 28, 1979, Pub. L. 96-161, title I, § 101(b), title II, § 209, 93 Stat. 1233, 1239.)

REFERENCES IN TEXT

Section 19 of the Federal Reserve Act, as amended, referred to in subsec. (g), is classified to sections 142, 371a, 371b, 371b-1, 374, 374a, 461, 463 to 466, and 505 of this title. For provisions of section 19 relating to payment of interest on demand deposits, see section 371a of this title.

CODIFICATION

Section 202 of Pub. L. 96-104, set out in the credit of this section, was repealed by section 212 of Pub. L. 96-161, effective at the close of Dec. 27, 1979. The amendment of this section by that repealed provision, described in the 1979 Amendment note set out under this section, shall continue in effect for limited purposes pursuant to section 212 of Pub. L. 96-161. See Savings Provisions note, describing the provisions of section 212 of Pub. L. 96-161, set out under section 85 of this title.

Section 302 of Pub. L. 93-501, set out in the credit of this section, was repealed by Pub. L. 96-104, § 1, Nov. 5, 1979, 93 Stat. 789. The amendment of this section by that repealed provision, described in the 1974 Amendment note set out under this section, in the main edition, shall continue in effect for limited purposes pursuant to section 1 of Pub. L. 96-104. See Savings Provisions note, describing the provisions of section 1 of Pub. L. 96-104, set out under section 85 of this title.

AMENDMENTS

1979—Subsec. (g). Pub. L. 96-161, § 101(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (k). Pub. L. 96-161, § 209, added subsec. (k). A prior subsec. (k), added by Pub. L. 96-104 and identical to the subsec. (k) added by Pub. L. 96-161, was repealed by section 212 of Pub. L. 96-161. See Codification note above.

Pub. L. 96-104 added subsec. (k). A prior subsec. (k), which also related to the inapplicability of State usury ceilings to certain obligations issued by insured nonmember banks and affiliates, was repealed by section 1 of Pub. L. 96-104.

1978—Subsec. (c)(1)(B). Pub. L. 95-630, § 306, inserted "(including liabilities which would be 'deposits' except for the proviso in section 1813(*l*)(5) of this title)" following "pay any deposits".

Subsec. (c)(11). Pub. L. 95-369, § 6(c)(25), added subsec. (c)(11).

Subsec. (d). Pub. L. 95-630, § 301(b), designated existing provisions as par. (1) and, in par. (1) as so designated, inserted "domestic" following "operate any new" and "such" following "main office or any" and added par. (2).

Pub. L. 95-369, § 6(c)(26), added provision prohibiting a foreign bank from moving any insured branch from one location to another without the consent of the Corporation.

Subsec. (g). Pub. L. 95-369, § 6(c)(27), added "and in insured branches of foreign banks" following "in insured nonmember banks".

Subsec. (j). Pub. L. 95-630, § 108, designated existing provisions as par. (1) and added pars. (2) and (3).

Pub. L. 95-369, § 6(c)(28), added "The provisions of this subsection shall not apply to any foreign bank having an insured branch with respect to dealings between such bank and any affiliate thereof." following "deemed to be an affiliate of such nonmember insured bank."

Subsec. (*l*). Pub. L. 95-630, § 301(c), added subsec. (*l*).

EFFECTIVE AND TERMINATION DATES OF 1979 AMENDMENTS

Amendment by section 101(b) of Pub. L. 96-161, which enacted subsec. (g)(2) of this section, effective Dec. 31, 1979, with that amendment to remain in effect until the close of Mar. 31, 1980, see section 104 of Pub. L. 96-161, set out as an Effective and Termination Date of 1979 Amendment note under section 371a of this title.

Amendment by section 209 of Pub. L. 96-161, which added subsec. (k), applicable only with respect to deposits made or obligations issued in any State during the period beginning on Dec. 28, 1979, and ending on the earliest of (1) in the case of a State statute, July 1, 1980; (2) the date, after Dec. 28, 1979, on which such State adopts a law stating in substance that such State does not want the amendment made by Pub. L. 96-161 to apply with respect to such deposits and obligations; or (3) the date on which such State certifies that the voters of such State, after Dec. 28, 1979, have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State which limits the amount of interest which may be charged in connection with such deposits and obligations, see section 211 of Pub. L. 96-161, set out as an Effective Date of 1979 Amendments note under section 371b-1 of this title.

Amendment by Pub. L. 96-104 applicable to deposits made or obligations issued in any State during the period beginning on Nov. 5, 1979, and ending on the

earlier of July 1, 1981, the date after Nov. 5, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section to apply with respect to such deposits and obligations, or the date on which such State certifies that the voters of such State have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State, which limits the amount of interest which may be charged in connection with such deposits and obligations, see section 204 of Pub. L. 96-104, set out as an Effective Date of 1979 Amendments note under section 371b-1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (c)(1) and (*l*) by sections 306 and 301(c) of Pub. L. 95-630 effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630 set out as an Effective Date note under section 375b of this title.

Amendment of subsec. (j) by section 108 of Pub. L. 95-630, relating to imposition of civil penalties, applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 93 of this title.

EFFECTIVE AND TERMINATION DATES OF 1969 AMENDMENT

Amendment of subsec. (g) of this section by the addition of three sentences at the end thereof under section 2(a) of Pub. L. 91-151 to be effective only through Dec. 15, 1980, with such three sentences to be repealed effective Dec. 15, 1980, see section 7(3) of Pub. L. 89-597, as amended, set out as an Effective and Termination Dates of 1966 Amendment note under section 461 of this title.

EFFECTIVE AND TERMINATION DATES OF 1966 AMENDMENT

Amendment of the 2nd and 3rd sentences of subsec. (g) of this section by section 3 of Pub. L. 89-597 effective only through December 15, 1980, and, effective December 15, 1980, such sentences further amended to read as they would without the amendment made by section 3 of Pub. L. 89-597, see section 7(2) of Pub. L. 89-597, as amended, set out as an Effective and Termination Dates of 1966 Amendment note under section 461 of this title.

STATES HAVING CONSTITUTIONAL PROVISIONS REGARDING MAXIMUM INTEREST RATES

The provisions of title II of Pub. L. 96-161, which enacted subsec. (k) of this section and repealed provisions which had formerly amended this section, to continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates, see section 213 of Pub. L. 96-161, set out as a note under section 86a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1817, 2902 of this title; title 15 section 18a.

§ 1829b. Retention of records by insured banks

[*See main edition for text of (a) to (h)*]

(i) Application of provisions to foreign banks

The provisions of this section shall not apply to any foreign bank except with respect to the transactions and records of any insured branch of such a bank.

(As amended Sept. 17, 1978, Pub. L. 95-369, § 6(c)(29), 92 Stat. 620.)

AMENDMENTS

1978—Subsec. (i). Pub. L. 95-369 added subsec. (i).

§ 1831a. State-chartered insured banks

(a) Interest rates

In order to prevent discrimination against State-chartered insured banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such State bank would be permitted to charge in the absence of this subsection, a State bank may in the case of business or agricultural loans in the amount of $25,000 or more, notwithstanding any State constitution or statute, which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run.

(b) Interest overcharge; forfeiture; interest payment recovery

If the rate prescribed in subsection (a) of this section exceeds the rate such State bank would be permitted to charge in the absence of this paragraph, and such State fixed rate is thereby preempted by the rate described in subsection (a) of this section, the taking, receiving, reserving, or charging a greater rate of interest than is allowed by subsection (a) of this section when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of the interest paid from the State bank taking or receiving such interest.

(Sept. 21, 1950, ch. 967, § 2[24] as added Dec. 28, 1979, Pub. L. 96-161, title II, § 202, 93 Stat. 1235.)

PRIOR PROVISIONS

A prior section 1831a, act Sept. 21, 1950, ch. 967, § 2[24], as added Nov. 5, 1979, Pub. L. 96-104, title I, § 102, 93 Stat. 789, identical to this section as added by Pub. L. 96-161, was repealed by section 212 of Pub. L. 96-161, effective at the close of Dec. 27, 1979, except that its provisions would continue to apply to any loan made in any State on or after Nov. 5, 1979, but prior to such repeal.

A prior section 1831a, act Sept. 21, 1950, ch. 967, § 2[24], as added Oct. 29, 1974, Pub. L. 93-501, title II, § 202, 88 Stat. 1558, identical to this section as added by Pub. L. 96-104, was repealed by section 1 of Pub. L. 96-104 except that its provisions shall continue to apply to any loan made in any State during the period specified in section 206 of Pub. L. 93-501, set out as an Effective and Termination Dates of 1974 Amendment note below.

Section 106 of Pub. L. 96-104, title I, Nov. 5, 1979, 93 Stat. 792, which provided for the separability of the provisions of title I of Pub. L. 96-104 in the event of the invalidity of any of the provisions of such title I, was repealed by section 212 of Pub. L. 96-161, effective at the close of Dec. 27, 1979.

Section 205 of Pub. L. 93-501, title II, Oct. 29, 1974, 88 Stat. 1560, which provided for the separability of

the provisions of title II of Pub. L. 93-501 in the event of the invalidity of any of the provisions of such title II, was repealed by section 1 of Pub. L. 96-104.

EFFECTIVE DATE OF 1979 AMENDMENTS

Section 207 of Pub. L. 96-161 provided that: "The amendments made by sections 201 through 205 of this title and the provisions of sections 201 through 205 of this title [enacting sections 86a, 1730e, and 1831a of this title and amending section 85 of this title and 687 of Title 15, Commerce and Trade] shall apply only with respect to loans made in any State during the period beginning on the date of enactment of this Act [Dec. 28, 1979] and ending on the earliest of—

"(1) in the case of a State statute, July 1, 1980;

"(2) the date, after the date of the enactment of this Act [Dec. 28, 1979], on which such State adopts a law stating in substance that such State does not want the amendments made by sections 201 through 205 of this title and the provisions of this title to apply with respect to loans made in such State; or

"(3) the date on which such State certifies that the voters of such State, after the date of the enactment of this Act [Dec. 28, 1979], have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment to the constitution of such State which prohibits the charging of interest at the rates provided in the amendments made by sections 201 through 205 of this title and the provisions of this title."

Prior to its repeal by section 212 of Pub. L. 96-161, section 107 of Pub. L. 96-104 provided that: "The amendments made by this title [enacting sections 86a, 1730e, and 1831a of this title, amending section 85 of this title and section 687 of Title 15, Commerce and Trade, and enacting provisions set out as notes under this section and section 85 of this title] and the provisions of this title shall apply only with respect to loans made in any State during the period beginning on the date of the enactment of this Act [Nov. 5, 1979] and ending on the earlier of—

"(1) July 1, 1981;

"(2) the date, after the date of the enactment of this Act [Nov. 5, 1979], on which such State adopts a law stating in substance that such State does not want the amendments made by this title and the provisions of this title to apply with respect to loans made in such State; or

"(3) the date on which such State certifies that the voters of such State, after the date of the enactment of this Act [Nov. 5, 1979], have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment to the constitution of such State which prohibits the charging of interest at the rates provided in the amendments made by this title and the provisions of this title."

EFFECTIVE AND TERMINATION DATES OF 1974 AMENDMENTS

Prior to its repeal by section 1 of Pub. L. 96-104, section 206 of title II of Pub. L. 93-501 provided that: "The amendments made by this title [which enacted this section and section 1730e of this title, amended section 85 of this title and section 687 of Title 15, Commerce and Trade, and enacted provisions set out as a note under this section] shall apply to any loan made in any State after the date of enactment of this title [Oct. 29, 1974], but prior to the earlier of July 1, 1977, or the date (after the date of enactment of this title) on which the State enacts a provision of law which prohibits the charging of interest at the rate provided in the amendments made by this title."

SEPARABILITY OF PROVISIONS

Section 206 of Pub. L. 96-161 provided that: "If any provision of this title [enacting sections 86a, 371b-1, 1730e, and 1831a of this title, amending sections 85, 1425b, and 1828 of this title and section 687 of Title 15, Commerce and Trade, repealing former sections 86a, 371b-1, 1730e, and 1831a of this title and notes under sections 86a, 371a, and 1831a of this title] or the application of such provision to any person or circumstance shall be held invalid, the remainder of the title and the application of such provision to any person or circumstance other than that as to which it is held invalid shall not be affected thereby."

STATES HAVING CONSTITUTIONAL PROVISIONS REGARDING MAXIMUM INTEREST RATES

The provisions of title II of Pub. L. 96-161, which enacted this section, repealed former section 1831a of this title, and enacted provisions set out as notes under this section, to continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates, see section 213 of Pub. L. 96-161, set out as a note under section 86a of this title.

§ 1831b. Disclosures with respect to certain federally related mortgage loans

(a) Identity of beneficiary interest as condition for a loan; report of bank to Corporation

No insured bank, insured branch of a foreign bank, or mutual savings or cooperative bank which is not an insured bank, shall make any federally related mortgage loan to any agent, trustee, nominee, or other person acting in a fiduciary capacity without the prior condition that the identity of the person receiving the beneficial interest of such loan shall at all times be revealed to the bank. At the request of the Corporation, the bank shall report to the Corporation on the identity of such person and the nature and amount of the loan, discount, or other extension of credit.

[*See main edition for text of (b)*]

(As amended Sept. 17, 1978, Pub. L. 95-369, § 6(c)(30), 92 Stat. 620.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-369 added "insured branch of a foreign bank" following "No insured bank".

§ 1831c. Conversion of mutual savings banks

With respect to any State-chartered insured mutual savings bank which converts into a Federal savings bank or merges or consolidates into a Federal savings bank or a savings bank which is (or within sixty days after the merger or consolidation becomes) an insured institution within the meaning of section 1724 of this title, the Corporation shall indemnify the Federal Savings and Loan Insurance Corporation against any losses incurred by it which arise out of losses incurred by the converting bank prior to conversion as follows: One hundred per centum of such losses incurred by the Federal Savings and Loan Insurance Corporation during the first two years after conversion, 75 per centum during the third year, 50 per centum during the fourth year, and 25 per centum during the fifth year. The Corporation and the Federal Savings and Loan Insurance Corporation shall, within six months after November 10, 1978, mutually agree on what shall be treated as "losses incurred by it which arise out of losses incurred by the converting bank prior to conversion" for purposes hereof and, failing such agreement, the General Account-

ing Office shall prescribe the meaning of those terms. Any conversion, merger, or consolidation covered by this section shall not be deemed a termination of insured status under section 1818(a) of this title.

(Sept. 21, 1950, ch. 967, § 2[26], as added Nov. 10, 1978, Pub. L. 95-630, title XII, § 1205, 92 Stat. 3711.)

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

§ 1832. Prohibition on certain activities by depository institutions

(a) Withdrawal by negotiable or transferable instruments; exceptions

No depository institution shall allow the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties, except that such withdrawals may be made in the States of Massachusetts, Connecticut, Rhode Island, Maine, Vermont, New York, New Jersey, and New Hampshire.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 95-630, title XIII, § 1301, Nov. 10, 1978, 92 Stat. 3712; Pub. L. 96-161, title I, § 106, Dec. 28, 1979, 93 Stat. 1235.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-161 added "New Jersey," following "New York,".

1978—Subsec. (a). Pub. L. 95-630 inserted "New York," following "Vermont,".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1302 of title XIII of Pub. L. 95-630 provided that: "This title [amending this section] shall take effect upon enactment [Nov. 10, 1978]."

CHAPTER 17—BANK HOLDING COMPANIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 304, 371c, 375b, 1818, 3101, 3106 of this title; title 15 section 80b-2; title 26 sections 311, 1101, 1103, 6158.

§ 1841. Definitions

(a) [*See main edition for text of* (1) *to* (4)]

(5) Notwithstanding any other provision of this subsection—

[*See main edition for text of* (A) *to* (C)]

(D) No company is a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The Board is authorized upon application by a company to extend, from time to time for not more than one year at a time, the two-year period referred to herein for disposing of any shares acquired by a company in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years.

[*See main edition for text of* (E) *and* (F), (6); (b) *to* (g)]

(h)(1) Except as provided by paragraph (2), the application of this chapter and of section 371c of this title shall not be affected by the fact that a transaction takes place wholly or partly outside the United States or that a company is organized or operates outside the United States.

(2) The prohibitions of section 1843 of this title shall not apply to shares of any company organized under the laws of a foreign country (or to shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business of the investor company) that is principally engaged in business outside the United States if such shares are held or acquired by a bank holding company organized under the laws of a foreign country that is principally engaged in the banking business outside the United States, except that (1) such exempt foreign company (A) may engage in or hold shares of a company engaged in the business of underwriting, selling or distributing securities in the United States only to the extent that a bank holding company may do so under this chapter and under regulations or orders issued by the Board under this chapter, and (B) may engage in the United States in any banking or financial operations or types of activities permitted under section 1843(c)(8) of this title or in any order or regulation issued by the Board under such section only with the Board's prior approval under that section, and (2) no domestic office or subsidiary of a bank holding company or subsidiary thereof holding shares of such company may extend credit to a domestic office or subsidiary of such exempt company on terms more favorable than those afforded similar borrowers in the United States.

[*See main edition for text of* (i)]

(As amended Nov. 16, 1977, Pub. L. 95-188, title III, § 301(b), 91 Stat. 1389; Sept. 17, 1978, Pub. L. 95-369, § 8(e), 92 Stat. 623.)

AMENDMENTS

1978—Subsec. (h). Pub. L. 95-369 designated existing provisions as par. (1), and in par. (1) as so designated, substituted "Except as provided by paragraph (2), the application" for "The application"; struck out a proviso holding the prohibitions of section 1843 not applicable to shares of any company organized under the laws of a foreign country not doing business within the United States, if such shares are held or acquired by a bank holding company principally engaged in banking business outside the United States; and added par. (2).

1977—Subsec. (a)(5)(D). Pub. L. 95-188 authorized the Board to extend the time for disposition of acquired shares for not more than one year at a time and three years in the aggregate.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 375b, 619, 1817, 1818, 1842, 1843, 1971, 3101, 3102 of this title; title 15 section 78c; title 26 sections 1101, 1103.

§ 1842. Acquisition of bank shares or assets

(a) Prior approval of Board as necessary; exceptions; disposition, time extension; subsequent approval or disposition upon disapproval

It shall be unlawful, except with the prior approval of the Board, (1) for any action to be taken that causes any company to become a bank holding company; (2) for any action to be taken that causes a bank to become a subsidiary of a bank holding company; (3) for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank; (4) for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or (5) for any bank holding company to merge or consolidate with any other bank holding company. Notwithstanding the foregoing this prohibition shall not apply to (A) shares acquired by a bank, (i) in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 1841(b) of this title and except as provided in paragraphs (2) and (3) of section 1841(g) of this title, or (ii) in the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after May 9, 1956, in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired; or (B) additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition. The Board is authorized upon application by a bank to extend, from time to time for not more than one year at a time, the two-year period referred to above for disposing of any shares acquired by a bank in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years. For the purpose of the preceding sentence, bank shares acquired after December 31, 1970, shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, but in such instances acquisitions may be made without prior approval of the Board if the Board, upon application filed within ninety days after the shares are acquired, approves retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within two years after issuance of the order of disapproval.

(b) Application for approval; notice to Comptroller of Currency or State authority; views and recommendations; disapproval; hearings; order of Board; nonaction deemed grant of application; procedure in emergencies or probable failures requiring immediate Board action and orders

Upon receiving from a company any application for approval under this section, the Board shall give notice to the Comptroller of the Currency, if the applicant company or any bank the voting shares or assets of which are sought to be required is a national banking association or a District bank, or to the appropriate supervisory authority of the interested State, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a State bank, in order to provide for the submission of the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be. The views and recommendations shall be submitted within thirty calendar days of the date on which notice is given, or within ten calendar days of such date if the Board advises the Comptroller of the Currency or the State supervisory authority that an emergency exists requiring expeditious action. If the thirty-day notice period applies and if the Comptroller of the Currency or the State supervisory authority so notified by the Board disapproves the application in writing within this period, the Board shall forthwith give written notice of that fact to the applicant. Within three days after giving such notice to the applicant, the Board shall notify in writing the applicant and the disapproving authority of the date for commencement of a hearing by it on such application. Any such hearing shall be commenced not less than ten nor more than thirty days after the Board has given written notice to the applicant of the action of the disapproving authority. The length of any such hearing shall be determined by the Board, but it shall afford all interested parties a reasonable opportunity to testify at such hearing. At the conclusion thereof, the Board shall, by order, grant or deny the application on the basis of the record made at such hearing. In the event of the failure of the Board to act on any application for approval under this section within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. Notwithstanding any other provision of this subsection, if the Board finds that it must act immediately on any application for approval under this section in order to prevent the probable failure of a bank or bank holding company involved in a proposed acquisition, merger, or consolidation transaction, the Board may dispense with the notice requirements of this subsection, and if notice is given, the Board may request that the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be, be submitted immediately in any form or by any means acceptable to the Board. If the Board has found pursuant to this subsection either that an emergency exists requiring expeditious action or that it must act immediately to prevent probable failure, the Board

may grant or deny any such application without a hearing notwithstanding any recommended disapproval by the appropriate supervisory authority.

[*See main edition for text of* (c) *to* (e)]

(As amended Nov. 16, 1977, Pub. L. 95-188, title III, §§ 301(a), 302, 91 Stat. 1388, 1389.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-188, § 301(a), authorized the Board to extend the time for disposition of acquired shares for not more than one year at a time and three years in the aggregate.

Subsec. (b). Pub. L. 95-188, § 302, inserted provision for alternative submission of views and recommendations within ten calendar days of the date on which notice is given if the Board advises the appropriate supervisory authority that an emergency exists requiring expeditious action, substituted "shall, by order," for "shall by order" and added provisions respecting procedure in emergencies or probable failures requiring immediate Board action and orders.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1817, 1849, 1850, 2902, 3103, 3106 of this title; title 15 section 18a.

§ 1843. Interests in nonbanking organizations

[*See main edition for text of* (a) *and* (b)]

(c) Exemptions

The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of title 26, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors; and such prohibitions shall not, with respect to any other bank holding company, apply to—

[*See main edition for text of* (1)]

(2) shares acquired by a bank holding company or any of its subsidiaries in satisfaction of a debt previously contracted in good faith, but such shares shall be disposed of within a period of two years from the date on which they were acquired, except that the Board is authorized upon application by such bank holding company to extend such period of two years from time to time as to such holding company for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall extend beyond a date five years after the date on which such shares were acquired;

[*See main edition for text of* (3) *to* (13); (d) *and* (e)]

(As amended Nov. 16, 1977, Pub. L. 95-188, title III, § 301(c), 91 Stat. 1389; Nov. 10, 1978, Pub. L. 95-630, title I, § 112, 92 Stat. 3671.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-630 substituted "The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of Title 26, or to any labor, agricultural, or horticultural organization to which all or sustantially all of the assets of such company are hereafter transferred" for "The prohibitions in this section shall not apply to any bank holding company which is (i) a labor, agricultural, or horticultural organization and which is exempt from taxation under section 501 of Title 26".

1977—Subsec. (c)(2). Pub. L. 95-188 substituted "shares acquired by a bank holding company or any of its subsidiaries in satisfaction of a debt previously contracted in good faith, but such shares shall be disposed of within a period of two years" for "shares acquired by a bank in satisfaction of a debt previously contracted in good faith, but such bank shall dispose of such shares within a period of two years".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 371c, 1841, 1850, 3106 of this title; title 15 section 18a; title 26 sections 1101, 1103, 6158.

§ 1844. Administration

[*See main edition for text of* (a) *to* (d)]

(e) Termination of activities or ownership or control of nonbank subsidiaries constituting serious risk

(1) Notwithstanding any other provision of this chapter, the Board may, whenever it has reasonable cause to believe that the continuation by a bank holding company of any activity or of ownership or control of any of its nonbank subsidiaries, other than a nonbank subsidiary of a bank, constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company subsidiary bank and is inconsistent with sound banking principles or with the purposes of this chapter or with the Financial Institutions Supervisory Act of 1966, order the bank holding company or any such nonbank subsidiaries, after due notice and opportunity for hearing, and after considering the views of the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank or the Federal Deposit Insurance Corporation and the appropriate State supervisory authority in the case of an insured nonmember bank, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the bank holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing bank holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

(2) The Board may in its discretion apply to the United States district court within the ju-

risdiction of which the principal office of the holding company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith, but except as provided in section 1848 of this title, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(f) Powers of Board respecting applications, examinations, or other proceedings

In the course of or in connection with an application, examination, investigation or other proceeding under this chapter, the Board, or any member or designated representative thereof, including any person designated to conduct any hearing under this chapter, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and the Board is empowered to make rules and regulations to effectuate the purposes of this subsection. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this chapter may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted or where the witness resides or carries on business, for the enforcement of any subpena or subpena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any service required under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide. Any court having jurisdiction of any proceeding instituted under this subsection may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpena of the Board, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year or both.

(As amended Nov. 10, 1978, Pub. L. 95-630, title I, §§ 105(a), 106(b), 92 Stat. 3646, 3648.)

REFERENCES IN TEXT

The Financial Institutions Supervisory Act of 1966, referred to in subsec. (e), is Pub. L. 89-695, Oct. 16, 1966, 80 Stat. 1028. For distribution of this Act to the Code, see Short Title note under section 1464 of this title and Tables.

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-630, § 105(a), added subsec. (e).

Subsec. (f). Pub. L. 95-630, § 106(b), added subsec. (f).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

§ 1847. Penalties

(a) Any company which willfully violates any provision of this chapter, or any regulation or order issued by the Board pursuant thereto, shall upon conviction be fined not more than $1,000 for each day during which the violation continues. Any individual who willfully participates in a violation of any provision of this chapter shall upon conviction be fined not more than $10,000 or imprisoned not more than one year, or both. Every officer, director, agent, and employee of a bank holding company shall be subject to the same penalties for false entries in any book, report, or statement of such bank holding company as are applicable to officers, directors, agents, and employees of member banks for false entries in any books, reports, or statements of member banks under section 1005 of title 18.

(b)(1) Any company which violates or any individual who participates in a violation of any provision of this chapter, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Board by written notice. As used in the section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(2) In determining the amount of the penalty the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the company or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) The company or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in section 1848 of this title. If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(4) If any company or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Board, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate

United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(5) The Board shall promulgate regulations establishing procedures necessary to implement this subsection.

(6) All penalties collected under authority of this subsection shall be covered into the Treasury of the United States.

(As amended Nov. 10, 1978, Pub. L. 95-630, title I, § 106(a), 92 Stat. 3647.)

AMENDMENTS

1978—Pub. L. 95-630 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630, relating to imposition of civil penalties, applicable to violations occurring or continuing on or after Nov. 10, 1978, see section 109 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 93 of this title.

§ 1848. Judicial review

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1844, 1847, 1850 of this title.

§ 1849. Saving provision

[See main edition for text of (a)]

(b) Antitrust proceedings; stay of approval by Board; review de novo; judicial standards; limitations; exemptions

The Board shall immediately notify the Attorney General of any approval by it pursuant to section 1842 of this title of a proposed acquisition, merger, or consolidation transaction. If the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 1842 of this title shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 1842 of this title might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to section 1842 of this title on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of title 15, the standards applied by the court shall be identical with those that the Board is directed to apply under section 1842 of this title. Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 1842 of this title in compliance with this chapter and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of title 15, but nothing in this chapter shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

[See main edition for text of (c) to (f)]

(As amended Nov. 16, 1977, Pub. L. 95-188, title III, § 303, 91 Stat. 1390.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-188 authorized a proposed acquisition, merger, or consolidation transaction to be consummated immediately upon approval by the Board where the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction; prohibited a transaction from being consummated before the fifth calendar day after the date of approval by the Board where the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days; continued for all other cases the thirty day waiting period after date of approval by the Board for consummation of the transaction; and substituted provision for commencement of stay actions prior to the earliest time at which the transaction approval under section 1842 of this title might be consummated for prior provision for commencement of such stay actions within the thirty-day waiting period.

§ 1850. Acquisition of subsidiary, nonbanking activity or business, and tying arrangement: Federal Reserve Board proceedings; application for authorization; competitor as party in interest and person aggrieved; judicial review

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3106 of this title.

CHAPTER 18—BANK SERVICE CORPORATIONS

§ 1865. Regulation and examination of services

Whenever any bank which is regularly examined by a Federal supervisory agency, or any subsidiary or affiliate of such bank which is subject to examination by that agency, causes to be performed, by contract or otherwise, any bank services for itself, whether on or off its premises—

(1) such performance shall be subject to regulation and examination by such agency to the same extent as if the services were being performed by the bank itself on its own premises, and

(2) the bank shall notify such agency of the existence of a service relationship within 30 days after the making of such service contract or the performance of the service, whichever occurs first.

(As amended Nov. 10, 1978, Pub. L. 95-630, title III, § 308, 92 Stat. 3677.)

AMENDMENTS

1978—Pub. L. 95-630 among other changes, substituted provisions requiring banks regularly examined by a Federal supervisory agency, which cause to be performed, by contract or otherwise, any bank service for itself, to notify such supervisory agency of the existence of a service relationship within 30 days after making such service contract or performance of service, whichever occurs first for provisions requiring that no bank subject to examination by a Federal supervisory agency may cause to be performed, by contract or otherwise, any bank service for itself unless satisfactory assurances are furnished to such supervisory agency by both the bank and the party performing such services that the performances thereof will be subject to regulation and examination by such agency to the same extent as if such services were being performed by the bank itself.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

CHAPTER 19—SECURITY MEASURES FOR BANKS AND SAVINGS AND LOAN ASSOCIATIONS

§ 1881. Federal supervisory agency defined

REFERENCES IN TEXT

Federal savings and loan association, referred to in par. (4), deemed also a reference to Federal mutual savings bank, see section 1462 of this title.

CHAPTER 20—CREDIT CONTROL

§ 1904. Credit controls

COUNCIL ON WAGE AND PRICE STABILITY

Pub. L. 93-387, Aug. 24, 1974, 88 Stat. 750, as amended by Pub. L. 93-449, § 4(e), Oct. 18, 1974, 88 Stat. 1367; Pub. L. 94-78, §§ 2(a), 3 to 7, Aug. 9, 1975, 89 Stat. 411, 412; Pub. L. 95-121, §§ 1 to 6, Oct. 6, 1977, 91 Stat. 1091; Pub. L. 96-10, §§ 1-5, May 10, 1979, 96 Stat. 23, provided:

[*See main edition for text of Secs. 1 and 2*]

"SEC. 3. (a) The Council shall—

[*See main edition for text of (1) to (3)*]

"(4) conduct public hearings necessary to provide for public scrutiny of inflationary problems in various sectors of the economy for the purpose of controlling inflation;

"(5) focus attention on the need to increase productivity in both the public and private sectors of the economy, focus attention on the need to move toward full employment, and take into consideration the need to stimulate productivity in monitoring wages and prices to determine compliance with promulgated standards;

[*See main edition for text of (6)*]

"(7) review and appraise the various programs, policies, and activities of the departments and agencies of the United States for the purpose of determining the extent to which those programs and activities are contributing to inflation;

"(8) intervene and otherwise participate on its own behalf in rulemaking, ratemaking, licensing and other proceedings before any of the departments and agencies of the United States, in order to present its views as to the inflationary impact that might result from the possible outcomes of such proceedings; and

"(9) review information about and analyze the effects on the United States economy of—

"(A) the participation of the United States in international trade and commerce;

"(B) the changing patterns of supplies and prices of commodities in the world market;

"(C) the investment of United States capital in foreign countries;

"(D) short- and long-term weather changes in the world;

"(E) interest rates;

"(F) capital formation; and

"(G) the changing patterns of world energy supplies and prices.

[*See main edition for text of (b)*]

(c) The Council is directed to review its policies with respect to the national interest in promoting greater productivity growth and shall submit a report of its findings and recommendations to the Congress by July 1, 1979. Such review shall include, but not be limited to, the need for flexibility in determining compliance with pay and price standards based upon documentable productivity gains resulting from improved efficiency of the workforce.

"SEC. 4. (a) Any department or agency of the United States which collects, generates, or otherwise prepares or maintains data or information pertaining to the economy or any sector of the economy shall, upon the request of the Chairman of the Council, make that data or information available to the Council.

[*See main edition for text of (b) to (e)*]

"(f)(1) Product line or other category information relating to an individual firm or person and obtained under section 2(g) or submitted voluntarily pursuant to a Council request and judged by the Council to be confidential information shall be considered as confidential financial information under section 552(b)(4) of title 5 of the United States Code. Neither the Director nor any member of the Council may permit anyone other than sworn officers, members, and employees of the Council to examine such data.

"(2) Periodic reports obtained by the Council under section 2(g) or submitted voluntarily pursuant to a Council request and copies thereof which are retained by the reporting firm or person shall be immune from legal process.

[*See main edition for text of Sec. 5*]

"SEC. 6. There is authorized to be appropriated to carry out the provisions of this Act not to exceed—

"(1) $6,952,000 for the fiscal year ending September 30, 1979; and

"(2) $8,483,000 for the fiscal year ending September 30, 1980.

"SEC. 7. The authority granted by this Act terminates on September 30, 1980.

"SEC. 8. Notwithstanding any other provision of this Act, no payment under this Act may be made except to such extent, or in such amounts, as are provided in advance in appropriation Acts."

PROHIBITION AGAINST INFLATIONARY PROCUREMENT POLICIES

For provisions relating to the encouragement of noninflationary pay and price behavior by private industry and labor, and to provide for procurement by executive agencies and military departments of personal property and services at noninflationary prices and

wage rates, see Ex. Ord. No. 12092, Nov. 1, 1978, 43 F.R. 51375, set out as a note under section 401 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1905 of this title; title 15 section 3416.

CHAPTER 21—FINANCIAL RECORDKEEPING

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3401 of this title.

CHAPTER 22—TYING ARRANGEMENTS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1850, 3106 of this title.

§ 1972. Certain tying arrangements prohibited; correspondent accounts

(1) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;

(B) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;

(C) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

(D) that the customer provide some additional credit, property, or service to a bank holding company of such bank, or to any other subsidiary of such bank holding company; or

(E) that the customer shall not obtain some other credit, property, or service from a competitor of such bank, a bank holding company of such bank, or any subsidiary of such bank holding company, other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit.

The Board may by regulation or order permit such exceptions to the foregoing prohibition as it considers will not be contrary to the purposes of this chapter.

(2)(A) No bank which maintains a correspondent account in the name of another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(B) No bank shall open a correspondent account at another bank while such bank has outstanding an extension of credit to an executive officer or director of, or other person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, the bank desiring to open the account, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(C) No bank which maintains a correspondent account at another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(D) No bank which has outstanding an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, another bank shall open a correspondent account at such other bank, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(E) For purposes of this paragraph, the term "extension of credit" shall have the same meaning given it in section 371c of this title and the term "executive officer" shall have the same meaning given it under section 375a of this title.

(F)(i) Any bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such bank who violates any provision of this paragraph shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Comptroller of the Currency in the case of a national bank, the Board in the case of a State member bank, or the Federal Deposit Insurance Corporation in the case of an insured nonmember State bank, by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counselling, or aiding or abetting a violation.

(ii) In determining the amount of the penalty the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as

the case may be, shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(iii) The bank or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in subdivision (iv). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(iv) Any bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be. The Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28. The findings of the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5.

(v) If any bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(vi) The Comptroller of the Currency, the Board and the Federal Deposit Insurance Corporation shall promulgate regulations establishing procedures necessary to implement this section.

(vii) All penalties collected under authority of this section shall be covered into the Treasury of the United States.

(G)(i) Each executive officer and each stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of an insured bank shall make a written report to the board of directors of such bank for any year during which such executive officer or shareholder has outstanding an extension of credit from a bank which maintains a corresponding account in the name of such bank. Such report shall include the following information:

(1) the maximum amount of indebtedness to the bank maintaining the correspondent account during such year of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder, or which is controlled by such executive officer or stockholder;

(2) the amount of indebtedness to the bank maintaining the correspondent account outstanding as of a date not more than ten days prior to the date of filing of such report of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder;

(3) the range of interest rates charged on such indebtedness of such executive officer or stockholder of record; and

(4) the terms and conditions of such indebtedness of such executive officer or stockholder of record.

(ii) Each insured bank shall compile the reports filed pursuant to subparagraph (G)(i) and forward such compilation to the Comptroller of the Currency in the case of a national bank, the Board in the case of a State member bank, and the Federal Deposit Insurance Corporation in the case of an insured nonmember State bank.

(iii) Each insured bank shall include in the report required to be made under subsection (k)(1) of section 1817 of this title a list by name of each executive officer or stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of the bank who files information required by subparagraph (G)(i) and the aggregate amount of all extensions of credit by correspondent banks to such executive officers or stockholders of record, any company controlled by such executive officers or stockholders, and any political or campaign committee the funds or services of which will benefit such executive officers or stockholders, or which is controlled by such executive officers or stockholders.

(As amended Pub. L. 95-630, title VIII, § 801, Nov. 10, 1978, 92 Stat. 3690.)

AMENDMENTS

1978—Pub. L. 95-630 designated existing provisions as par. (1) and, as so designated, redesignated former pars. (1) to (5) as subpars. (A) to (E), and added par. (2).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

CHAPTER 23—FARM CREDIT SYSTEM

SUBCHAPTER II—FEDERAL INTERMEDIATE CREDIT BANKS AND PRODUCTION CREDIT ASSOCIATIONS

PART A—FEDERAL INTERMEDIATE CREDIT BANKS

§ 2075. Terms

Loans, advances, or discounts made under section 2074 of this title shall be repayable in not more than seven years (fifteen years if made to producers or harvesters of aquatic products) from the time they are made or discounted by the Federal intermediate credit bank, and shall bear such rate or rates of interest or discount as the board of directors of the bank shall from time to time determine with the approval of the Farm Credit Administration, but the rates charged financing institutions other than production credit associations shall be the same as those charged production credit associations. In setting the rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers, at the lowest reasonable costs on a sound business basis taking into account the cost of money to the bank, necessary reserves and expenses of the bank and production credit associations, and providing services to borrowers from the bank and associations. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank. No obligation tendered for discount by a financial institution, without the approval of the Farm Credit Administration, shall be eligible for discount upon which the original borrower has been charged a rate of interest exceeding by more than 1½ per centum per annum the discount rate of the bank.

(As amended Pub. L. 95-443, Oct. 10, 1978, 92 Stat. 1066.)

AMENDMENTS

1978—Pub. L. 95-443 added provision that loans, advances, or discounts made under section 2074 of this title would be repayable in not more than fifteen years from the time made or discounted by the Federal intermediate credit bank if made to producers or harvesters of aquatic products.

SUBCHAPTER V—DISTRICT AND FARM CREDIT ADMINISTRATION ORGANIZATION

PART A—DISTRICT ORGANIZATION

§ 2227. Powers of the district farm credit board

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

CHAPTER 24—FEDERAL FINANCING BANK

Sec.
2285a. Acquisition of obligations involving loan guarantees for New York City [New].

§ 2285. Functions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2290, 2294 of this title; title 15 section 1872.

§ 2285a. Acquisition of obligations involving loan guarantees for New York City

Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire any obligation the payment of interest or principal of which has at any time been guaranteed in whole or in part under title I of the New York City Loan Guarantee Act of 1978 [31 U.S.C. 1521 et seq.].

(Pub. L. 95-339, title II, § 201(b), Aug. 8, 1978, 92 Stat. 467.)

REFERENCES IN TEXT

The New York City Loan Guarantee Act of 1978, as amended, referred to in text, is Pub. L. 95-339, Aug. 8, 1978, 92 Stat. 460, as amended. Title I of the New York City Loan Guarantee Act of 1978 is classified generally to subchapter II (§ 1521 et seq.) of chapter 27 of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 1501 of Title 31 and Tables.

CODIFICATION

Section was enacted as part of the New York City Loan Guarantee Act of 1978 and not as part of the Federal Financing Bank Act of 1973, which comprises this chapter.

CHAPTER 27—REAL ESTATE SETTLEMENT PROCEDURES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 8232.

CHAPTER 30—COMMUNITY REINVESTMENT [NEW]

Sec.
2901. Congressional findings and statement of purpose.
2902. Definitions.
2903. Financial institutions; evaluation.
2904. Report to Congress.
2905. Regulations.

§ 2901. Congressional findings and statement of purpose

(a) The Congress finds that—

(1) regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business;

(2) the convenience and needs of communities include the need for credit services as well as deposit services; and

(3) regulated financial institutions have continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.

(b) It is the purpose of this chapter to require each appropriate Federal financial supervisory

agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.

(Pub. L. 95-128, title VIII, § 802, Oct. 12, 1977, 91 Stat. 1147.)

SHORT TITLE

Section 801 of Pub. L. 95-128 provided that: "This title [enacting this chapter] may be cited as the 'Community Reinvestment Act of 1977'."

§ 2902. Definitions

For the purposes of this chapter—

(1) the term "appropriate Federal financial supervisory agency" means—

(A) the Comptroller of the Currency with respect to national banks;

(B) the Board of Governors of the Federal Reserve System with respect to State chartered banks which are members of the Federal Reserve System and bank holding companies;

(C) the Federal Deposit Insurance Corporation with respect to State chartered banks and savings banks which are not members of the Federal Reserve System and the deposits of which are insured by the Corporation; and

(D) the Federal Home Loan Bank Board with respect to institutions the deposits of which are insured by the Federal Savings and Loan Insurance Corporation and to savings and loan holding companies;

(2) the term "regulated financial institution" means an insured bank as defined in section 1813 of this title or an insured institution as defined in section 401 of the National Housing Act [12 U.S.C. 1724]; and

(3) the term "application for a deposit facility" means an application to the appropriate Federal financial supervisory agency otherwise required under Federal law or regulations thereunder for—

(A) a charter for a national bank or Federal savings and loan association;

(B) deposit insurance in connection with a newly chartered State bank, savings bank, savings and loan association or similar institution;

(C) the establishment of a domestic branch or other facility with the ability to accept deposits of a regulated financial institution;

(D) the relocation of the home office or a branch office of a regulated financial institution;

(E) the merger or consolidation with, or the acquisition of the assets, or the assumption of the liabilities of a regulated financial institution requiring approval under section 1828(c) of this title or under regulations issued under the authority of title IV of the National Housing Act [12 U.S.C. 1724 et seq.]; or

(F) the acquisition of shares in, or the assets of, a regulated financial institution requiring approval under section 1842 of this title or section 408(e) of the National Housing Act [12 U.S.C. 1730a(e)].

(4) A financial institution whose business predominately consists of serving the needs of military personnel who are not located within a defined geographic area may define its "entire community" to include its entire deposit customer base without regard to geographic proximity.

(Pub. L. 95-128, title VIII, § 803, Oct. 12, 1977, 91 Stat. 1147, amended Pub. L. 95-630, title XV, § 1502, Nov. 10, 1978, 92 Stat. 3713.)

REFERENCES IN TEXT

Federal savings and loan association, referred to in par. (3)(A), deemed also a reference to Federal mutual savings bank, see section 1462 of this title.

The National Housing Act, referred to in par. (3)(E), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title IV of the National Housing Act is classified generally to subchapter IV (§ 1724 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

1978—Par. (4). Pub. L. 95-630 added par. (4).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective Nov. 10, 1978, see section 1505 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 27 of this title.

§ 2903. Financial institutions; evaluation

In connection with its examination of a financial institution, the appropriate Federal financial supervisory agency shall—

(1) assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution; and

(2) take such record into account in its evaluation of an application for a deposit facility by such institution.

(Pub. L. 95-128, title VIII, § 804, Oct. 12, 1977, 91 Stat. 1148.)

§ 2904. Report to Congress

Each appropriate Federal financial supervisory agency shall include in its annual report to the Congress a section outlining the actions it has taken to carry out its responsibilities under this chapter.

(Pub. L. 95-128, title VIII, § 805, Oct. 12, 1977, 91 Stat. 1148.)

§ 2905. Regulations

Regulations to carry out the purposes of this chapter shall be published by each appropriate Federal financial supervisory agency, and shall take effect no later than 390 days after October 12, 1977.

(Pub. L. 95-128, title VIII, § 806, Oct. 12, 1977, 91 Stat. 1148.)

CHAPTER 31—NATIONAL CONSUMER COOPERATIVE BANK [NEW]

Sec.
3001. Congressional statement of findings and purpose.

SUBCHAPTER I—ESTABLISHMENT AND OPERATION

3011. Creation and charter; principal office; venue; purposes.
3012. General corporate powers.
3013. Board of Directors.
(a) Composition; appointment; eligibility; removal; vacancies.
(b) Resignation and termination of terms of Presidential appointees; criteria; shareholder directorships to fill vacated directorships; resignation of remaining Presidential appointees on Final Government Equity Redemption Date; continuation of Presidential appointment power.
(c) Nominating criteria for appointment or election; representational limitations.
(d) Election of successors to resigned Presidential appointees and successors to shareholder directors; rules governing.
(e) Terms; officer of Bank not to serve as director; notice requirements of Bank and voting shareholders.
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3017. Bonds, debentures, notes and other evidences of indebtedness.
(a) Authorization for public or private sale; time of issuance, interest rates, and terms and conditions; outstanding amount.
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(c) Purchase and sale by Bank; methods of sale and delivery.
(d) Obligations as not guaranteed by United States and not to constitute a debt or obligation of United States.
3018. Loans.
(a) General requirements for loans and commitments for loans; limitations; allocation of assistance for low-income persons; criteria and factors for making loans, etc.; publication.
(b) Repayment requirements; criteria for terms, rates, and charges; advancement of loan proceeds.
(c) Guarantees by Bank; requirements; charges.
(d) Assignment of guaranteed loans; contestability of guarantee; criteria for purchase by Bank of guaranteed loan in lieu of requiring service by lender.
(e) Aggregate amount of commitments to make or guarantee loans.
3019. Taxation by State, county, etc., taxing authority.
3020. Quarters and space for principal and other offices.
3021. Annual report to Congress; contents.
3022. Authorization of additional appropriations; restrictions on use.
3023. Appeal procedures applicable upon denial or restriction of application for assistance.
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§ 3001. Congressional statement of findings and purpose

The economic and financial structure of this country in combination with the Nation's natural resources and the productivity of the American people has produced one of the highest average standards of living in the world. However, the Nation has been experiencing inflation and unemployment together with an increasing gap between producers' prices and consumers' purchasing power. This has resulted in a growing number of our citizens, especially the elderly, the poor, and the inner city resident, being unable to share in the fruits of our Nation's highly efficient economic system. The Congress finds that user-owned cooperatives are a proven method for broadening ownership and control of the economic organizations, increasing the number of market participants, narrowing price spreads, raising the quality of goods and services available to their membership, and building bridges between producers and consumers, and their members and patrons. The Congress also finds that consumer and other types of self-help cooperatives have been hampered in their formation and growth by lack of access to adequate cooperative credit facilities and lack of technical assistance. Therefore, the Congress finds a need for the establishment of a National Consumer Cooperative Bank which will make available necessary financial and technical assistance to cooperative self-help endeavors as a means of strengthening the Nation's economy.

(Pub. L. 95-351, § 2, Aug. 20, 1978, 92 Stat. 499.)

SHORT TITLE

Section 1 of Pub. L. 95-351 provided: "That this Act [which enacted this chapter and amended section 5315 of Title 5, Government Organization and Employees, and sections 856, 867, and 868 of Title 31, Money and Finance] may be cited as the 'National Consumer Cooperative Bank Act'."

SUBCHAPTER I—ESTABLISHMENT AND OPERATION

§ 3011. Creation and charter; principal office; venue; purposes

There is created and chartered a body corporate, the National Consumer Cooperative Bank, hereinafter referred to as the "Bank", as an instrumentality of the United States, and until otherwise provided, shall be a mixed ownership Government corporation. The Bank shall have perpetual existence unless and until its charter is revoked or modified by Act of Congress. The right to revise, amend, or modify the charter of the Bank is specifically and exclusively reserved to the Congress. The principal office of the Bank shall be in Washington, District of Columbia, and, for the purpose of venue, shall be considered a resident thereof. It shall make loans and offer its services throughout the United States, its territories and possessions, and in the Commonwealth of Puerto Rico. The Bank shall—

(1) encourage the development of new and existing cooperatives eligible for its assistance by providing specialized credit and technical assistance;

(2) maintain broad-based control of the Bank by its voting stockholders;

(3) encourage broad-based ownership, control, and active participation by members in eligible cooperatives;

(4) assist in improving the quality and availability of goods and services to consumers; and

(5) encourage ownership of its equity securities by cooperatives and others as provided in section 3014 of this title, so that the date when all of the Bank's class A stock owned by the United States has been fully redeemed (the "Final Government Equity Redemption Date") occurs as early as practicable.

(Pub. L. 95-351, title I, § 101, Aug. 20, 1978, 92 Stat. 499.)

§ 3012. General corporate powers

The Bank shall have the power to make and service loans, commitments for credit, guarantees, furnish financially related services, technical assistance and the results of research, issue its obligations within the limitations imposed by section 3017 of this title in such amounts, at such times, and on such terms as the Bank may determine, and to exercise the other powers and duties prescribed in this chapter, and shall have the power to—

(1) operate under the direction of its Board of Directors;

(2) adopt, alter, and use a corporate seal, which shall be judicially noted;

(3) elect by its Board of Directors a president, one or more vice presidents, a secretary, a treasurer, and provide for such other officers, employees, and agents as may be necessary, and define their duties in accordance with regulations and standards adopted by the Board, and require surety bonds or make other provisions against losses occasioned by acts of employees;

(4) prescribe by its Board of Directors its bylaws not inconsistent with law, which shall establish the terms of office and the procedure for election of elective members; provide in a manner not inconsistent with this chapter for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; and prescribe the manner in which its officers, employees, and agents are elected or selected, its property acquired, held and transferred, its loans, commitments, other financial assistance, guarantees and appraisals may be made, its general business conducted, and the privilege granted it by law exercised and enjoyed;

(5) enter into contracts and make advance, progress, or other payments with respect to such contracts, without regard to the provisions of section 529 of title 31;

(6) sue and be sued in its corporate name and complain and defend, in any court of competent jurisdiction, State or Federal;

(7) acquire, hold, lease, mortgage, or dispose of, at public or private sale, real and personal property and sell or exchange any securities or obligations, and otherwise exercise all the usual incidents of ownership of property necessary or convenient to its business: *Provided,*

That any such acquisition or ownership of real property shall not deprive a State or political subdivision thereof of its civil or criminal jurisdiction in and over such property or impair the civil rights of the inhabitants of such property under Federal, State, or local laws;

(8) obtain insurance against loss in connection with property and other assets;

(9) modify or consent to the modification with respect to the rate of interest, time of payment of any installment of principal or interest, security, or any other term of any contract or agreement to which it is a party or has an interest pursuant to this chapter;

(10) utilize and act through any Federal, State, or local public agency or instrumentality, or private agency or organization, with the consent of the agency or organization concerned, and contract with such agency, instrumentality, or organization for furnishing or receiving technical services and benefits of research, services, funds or facilities; and make advance, progress, or other payments with respect to such contracts without regard to section 529 of title 31;

(11) within the limitations of section 3017 of this title, borrow money and issue notes, bonds and debentures or other obligations individually or in concert with other financial institutions, agencies or instrumentalities, of such character and such terms and conditions and at rates of interest as may be determined;

(12) issue certificates of indebtedness to its stockholders or members and pay interest on funds left with the Bank, and accept grants or interest free temporary use of funds made available to it;

(13) participate with one or more other financial institutions, agencies, instrumentalities, or foundations in loans or guarantees under this chapter on terms as may be agreed upon;

(14) accept guarantees from other agencies for which loans made by the Bank may be eligible;

(15) establish one or more branch offices and one or more advisory councils in connection with any such branch offices, as may from time to time be authorized by the Board of Directors;

(16) buy and sell obligations of, or insured by, the United States or any agency or instrumentalities thereof, or securities backed by the full faith and credit of any such agency or instrumentality and, after the final Government Equity Redemption Date, make such other investments as may be authorized by the Board of Directors;

(17) approve the salary scale of officers and employees of the Bank, in accordance with regulations and standards adopted by the Board of Directors, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, but, except as otherwise provided in this chapter, the General Schedule pay rates shall be applicable until all class A stock held by the Secretary of the Treasury has been retired; and

(18) have such other incidental powers as may be necessary or expedient to carry out its duties under this chapter.

The stock or other securities or instruments issued by the Bank shall, to the same extent as securities which are the direct obligations of the United States, be "exempt securities" within the meaning of the laws administered by the Securities and Exchange Commission.

(Pub. L. 95-351, title I, § 102, Aug. 20, 1978, 92 Stat. 500.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-351, Aug. 20, 1978, 92 Stat. 499, known as the National Consumer Cooperative Bank Act, which enacted this chapter, amended section 5315 of Title 5, Government Organization and Employees, and sections 856, 867, and 868 of Title 31, Money and Finance, and enacted provisions set out as a note under section 3001 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3018 of this title.

§ 3013. Board of Directors

(a) Composition; appointment; eligibility; removal; vacancies

The Bank shall be governed by a Board of Directors (hereinafter referred to as the "Board") which shall consist of fifteen members. Subject to the provisions of subsection (b) of this section, all members of the Board shall be appointed by the President, with the advice and consent of the Senate, for terms of three years or until their successors have been appointed and qualified. The President shall appoint eight members of the Board from among the officers of the agencies and departments of the United States Government: *Provided,* That at any one time no more than one member shall be from any one agency or department. The President shall appoint one member of the Board from among proprietors of small business concerns, as defined under section 632 of title 15, which are manufacturers or retailers. The member of the Board appointed in accordance with the preceding sentence shall not be subject to the resignation and termination provisions of subsection (b) of this section. The remaining members shall be from the general public (and not from the officers or employees of the United States Government) but shall have extensive experience in the cooperative field representative of the following classes of cooperatives: (1) housing, (2) consumer goods, (3) low-income cooperatives, (4) consumer services, and (5) all other eligible cooperatives, and for these appointments the President shall consider nominees submitted by national associations of cooperatives. Any member appointed by the President may be removed at any time with or without cause by the President. If a vacancy occurs on the Board for any reason other than a resignation pursuant to subsection (b) of this section, a new member shall be appointed by the President to serve until the next annual meet-

ing of the Bank, at which time the vacancy shall be filled for the remainder of the unexpired term by the President or the holders of class B and class C stock, as provided in this section.

(b) Resignation and termination of terms of Presidential appointees; criteria; shareholder directorships to fill vacated directorships; resignation of remaining Presidential appointees on Final Government Equity Redemption Date; continuation of Presidential appointment power

At the first annual meeting occurring after the time when the amount of paid-in capital of the Bank attributable to the shares of class B stock and class C stock equals or exceeds $3,000,000, three members of the Board appointed by the President from the general public shall resign. Similarly, when the amount of paid-in capital attributable to the shares of class B and class C stock equals or exceeds $10,000,000 the terms of the other three members appointed by the President from the general public shall terminate. Two additional members of the Board designated by the President (who shall be members who had been appointed by the President) shall resign at the annual meeting occurring after the time when the amount of paid-in capital attributable to the class B and class C stock equals or exceeds eight-fifteenths of the total amount of paid-in capital of the Bank. An additional member of the Board designated by the President (who shall be a member who had been appointed by the President) shall resign at the annual meeting occurring after the time when the amount of paid-in capital attributable to the class B and class C stock equals or exceeds three-fifths of the total amount of paid-in capital of the Bank. As members of the Board resign in accordance with the foregoing provisions, the directorships vacated shall be deemed shareholder directorships and shall be filled by the holders of class B stock and class C stock in accordance with the provisions of subsection (c) of this section. Five of the remaining members of the Board appointed by the President shall resign on the Final Government Equity Redemption Date. Thereafter, one member of the Board shall continue to be appointed by the President from among proprietors of small business concerns, as defined under section 632 of title 15, which are manufacturers or retailers.

(c) Nominating criteria for appointment or election; representational limitations

At all elections of Directors by holders of class B stock and class C stock, nominations shall be made by the classes of eligible cooperatives specified in subsection (a) of this section. Vacant shareholder directorships shall be filled, whether by appointment or election, so that at any time when there are three or more shareholder directors on the board, there shall be at least one director representing each of the classes of housing cooperatives, low-income cooperatives, and consumer goods and services cooperatives. Each nominee for shareholder directorship of a particular class shall have at least three years experience as a director or senior officer in the class of cooperatives to be represented. No one class of cooperatives specified in subsection (a) of this section shall be represented on the Board by more than three directors.

(d) Election of successors to resigned Presidential appointees and successors to shareholder directors; rules governing

When five of the remaining members of the Board appointed by the President have resigned pursuant to subsection (b) of this section, their successors and the successors to shareholder directors shall thereafter be elected pursuant to such rules as the Board may from time to time prescribe in the bylaws of the Bank.

(e) Terms; officer of Bank not to serve as director; notice requirements of Bank and voting shareholders

No director shall be eligible to be elected for more than two consecutive full three-year terms. No officer of the Bank shall be eligible to serve simultaneously as a director on the Board of the Bank. The Bank shall give adequate advance notice to all voting stockholders of nominees and of the procedures for nominating other candidates. Each voting stockholder shall make the information required in this paragraph available to its members.

(f) Annual election of chairman and vice chairman and selection of secretary; eligibility; establishment of Bank policies and direction of management

The Board shall annually elect from among its members a chairman and vice chairman and select a secretary who need not be a member. The Board shall establish the policies of the Bank governing its funding, lending, and other financial and technical assistance, and shall direct the management of the Bank.

(g) Conduct of meetings; rules governing

The Board shall meet at least quarterly. Its meeting shall be open to members or representatives of all eligible cooperatives and other eligible organizations, as observers only, and to persons or representatives of groups who identify their interest in the Bank and who are invited to attend a meeting, subject to such rules as the Board may establish for the conduct of such meetings. Those rules shall include the manner of giving notice of meetings, the procedure for the conduct of meetings, the manner of submitting topics for the agenda, the allocation of time of presentations, and debate. The chairman, when sustained by the majority of the Board present, may adjourn the open meeting into an executive session on motion of the chairman, any Board member, or at the request of any applicant, borrower, officer, or employee when the matter under discussion involves an application, a loan, a personnel action, or other matter which might tend to impinge on the right of privacy of any person.

(h) Compensation, etc., of Presidential appointees

Members of the Board appointed by the President from among the officers of the agencies and departments of the United States Government shall not receive any additional compensation by virtue of their service on the Board. The member of the Board appointed from among proprietors of small business and,

until the Final Government Equity Redemption Date, members of the Board appointed by the President from among the general public or elected by the holders of the class B and class C stock shall (1) receive compensation at a rate equal to the daily equivalent of the rate prescribed for grade GS–18 under section 5332 of title 5 for each day that they are engaged in the performance of their duties on the Board, and (2) be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 for each day that they are away from their homes or regular places of business in the performance of their duties on the Board.

(Pub. L. 95–351, title I, § 103, Aug. 20, 1978, 92 Stat. 502; Pub. L. 96–149, Dec. 16, 1979, 93 Stat. 1089.)

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (h), was amended generally by Pub. L. 94–22, May 19, 1975, § 4, 89 Stat. 85, and as so amended does not contain a subsec. (b).

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–149, § 1(a), added provisions respecting appointment of a member from among proprietors of small business concerns, and substituted "fifteen" for "thirteen", "eight" for "seven", and "this section" for "this section 104", which for purposes of codification had been editorially translated as "section 3014 of this title".

Subsec. (b). Pub. L. 96–149, § 1(b), substituted provisions respecting criteria for resignations of initial two additional Board members and the additional Board member, for provisions respecting criteria for resignation of an additional Board member, and substituted "Five of the" for "Five".

Subsec. (d). Pub. L. 96–149, § 1(c), substituted "five of the" for "all five".

Subsec. (h). Pub. L. 96–149, § 1(d), added provisions relating to Board member appointed from among proprietors of small businesses.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3014 of this title.

§ 3014. Capitalization

(a) Subscriptions for capital; authorization of appropriations; availability of amounts

The capital of the Bank shall consist of capital subscribed by borrowers from the Bank, by cooperatives eligible to become borrowers, by organizations owned and controlled by such borrowers, by foundations, trust or charitable funds, by public bodies, and by the United States. Beginning with the fiscal year ending September 30, 1979, the United States shall purchase class A stock and for that fiscal year there are authorized to be appropriated $100,000,000 for such purposes, and there are authorized to be appropriated for the next four succeeding fiscal years an amount not to exceed $200,000,000 in the aggregate. Any amounts so authorized but not appropriated or not utilized to purchase such stock of the Bank in any such fiscal year is authorized to be appropriated or reappropriated and so used in subsequent fiscal years.

(b) Classes of stock; general requirements respecting rights, powers, privileges, and preferences

The capital stock of the Bank shall include class A, class B, and class C stock and such other classes with such rights, powers, privileges, and preferences of the separate classes as may be specified, not inconsistent with law, in the bylaws of the Bank. Class A preferred stock held by the United States shall be a preferred stock with first preference with respect to assets and dividends over all other classes of stock issued by the Bank. So long as any class A stock is outstanding, the Bank shall not pay any dividend on any other class of stock at a rate greater than the statutory dividend payable on the class A stock. Class B and class C stock shall be common stock with voting rights as provided for herein and shall be issued only to eligible borrowers and organizations controlled by such borrowers or organizations eligible to borrow, and shall be transferable only on the books of the Bank and then only to another eligible borrower. No holder of voting stock of the Bank shall be entitled to more than one vote regardless of the number of shares of stock of other classes held, except as provided in subsection (g) of this section.

(c) Class A stock; issuance, dividends, etc.

Class A stock with a par value of $100 per share shall be issued by the Bank to the Secretary of the Treasury on behalf of the United States in exchange for capital furnished pursuant to subsection (a) of this section. The holder of class A stock shall be entitled to dividends at a rate determined by the Secretary of the Treasury taking into consideration the average market yield, during the month preceding the close of each fiscal year, on outstanding marketable obligations of the United States of comparable maturity: *Provided*, That until October 1, 1990, such dividends shall not exceed 25 per centum of gross revenues for the year less necessary operating expenses, including a reserve for possible losses. Such dividends shall be payable annually into miscellaneous receipts of the Treasury and shall be cumulative. Any such dividend payment may be deferred by the Board of Directors with the approval of the Secretary of the Treasury, but any dividend payment so deferred shall bear interest at the same rate as the rate at which dividends accumulate on the class A stock. Without the approval of the Secretary of the Treasury, the Bank shall not pay any dividend or distribution on, or make any redemption or repurchase of, any other class of stock at any time when the cumulative dividends on the class A stock shall not have been paid in full (together with any unpaid interest thereon). Upon any liquidation or dissolution of the Bank, the holder of class A stock shall be entitled to receive out of the assets of the Bank available for distribution to its stockholders, prior to any payment to the holders of any other class of stock of the Bank, an amount not less than the aggregate par value of all class A stock outstanding, plus all accrued and unpaid dividends accrued thereon to and including the date of payment (together with all unpaid interest thereon). The class A stock shall be redeemed and retired as soon as

practicable consistent with the purposes of this chapter (such redemption to be at a price equal to the par value of the class A stock so redeemed plus cumulative dividends accrued thereon to the date of redemption): *Provided*, That beginning on October 1, 1990, there shall be redeemed as a minimum with respect to each fiscal year a number of shares of class A stock having an aggregate par value equal to the aggregate consideration received by the Bank for the issue of its class B and class C stock during that fiscal year. Each such redemption shall take place not later than ninety days after the close of each fiscal year.

(d) Class B stock; ownership requirements, etc.

Class B stock shall be held only by recipients of loans under section 3015 of this title, and such borrowers shall be required to own class B stock in an amount not less than 1 per centum of the face amount of the loan at the time the loan is made. Such borrowers may be required by the Bank to own additional class B or class C stock at the time the loan is made, but not to exceed an amount equal to 10 per centum of the face amount of the loan, or from time to time, as the Bank may determine. Such additional stock ownership requirements may be on the basis of the face amount of the loan, the outstanding balances, or on a percentage of interest payable during any year or any quarter thereof, as the Bank may determine will provide adequate capital for the operation of the Bank and equitable ownership thereof among borrowers.

(e) Class C stock; purchase, dividends, etc.

Class C stock shall be available for purchase and shall be held only by borrowers or by organizations eligible to borrow under section 3015 of this title or by organizations controlled by such borrowers, and shall be entitled to dividends in the manner specified in the bylaws of the Bank. Such dividends shall be payable only from income, and, until all class A stock has been retired, the rate of such dividends shall not exceed the rate of the statutory dividend on class A stock.

(f) Nonvoting stock of other classifications and priorities; issuance, etc.

Nonvoting stock of other classifications and other priorities may be issued at the discretion of the Board, to other investors, except that so long as any class A stock is outstanding, the Board shall not authorize or issue any class of stock, whether voting or nonvoting, that would rank prior or equal to the class A stock as to dividends or upon liquidation or dissolution.

(g) Voting requirements of bylaws

(1) The bylaws of the Bank may provide for more than one vote on the basis of—

(A) the amount of class B stock, class C stock, or both classes held, with such limitations as will encourage investments in class C stock;

(B) the amount of patronage of the Bank; and

(C) number of members in the cooperative.

(2) Such bylaws shall avoid—

(A) voting control of the Bank from becoming concentrated with the larger affluent or smaller less affluent organizations;

(B) a disproportionately larger vote in one or more of the groups of cooperatives referred to in section 3013(c) of this title; and

(C) the concentration of more than 5 per centum of the total voting control in any one class B or class C stockholder.

(h) Acceptance by Bank of nonreturnable capital contributions

The Bank may accept nonreturnable capital contributions on which no interest, dividend, or patronage refund shall be payable from associations, foundations, or funds or public bodies or agencies at the discretion of the Board. For the purpose of accepting such contributions, the Bank will be a governmental unit within the meaning of section 170(b)(1)(A)(v) of title 26.

(i) Patronage refunds

After payment of all operating expenses of the Bank, including interest on its obligations, and after setting aside appropriate funds for reserves for losses, for cumulative dividends on class A stock and dividends on class C stock and for any redemption of class A stock in accordance with subsection (c) of this section, the Bank shall annually set aside the remaining earnings of the Bank for patronage refunds in the form of class B or C stock or allocated surplus in accordance with the bylaws of the Bank. After ten years from the date of issue of any such stock, or at such earlier time as all the Government-held stock is retired, patronage refunds may be made in cash, or partly in stock and partly in cash.

(Pub. L. 95–351, title I, § 104, Aug. 20, 1978, 92 Stat. 503.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3011 of this title.

§ 3015. Eligibility of cooperatives

(a) General requirements

For the purpose of all subchapters of this chapter, subject to the limitations of subsection (d) of this section, an eligible cooperative is an organization chartered or operated on a cooperative, not-for-profit basis for producing or furnishing goods, services or facilities, primarily for the benefit of its members or voting stockholders who are ultimate consumers of such goods, services, or facilities, or a legally chartered entity entirely owned and controlled by any such organization or organizations, if it—

(1) makes such goods, services or facilities directly or indirectly available to its members or voting stockholders on a not-for-profit basis;

(2) does not pay dividends on voting stock or membership capital in excess of such percentage per annum as may be approved under the bylaws of the Bank;

(3) provides that its net savings shall be allocated or distributed to all members or patrons, in proportion to their patronage, or shall be retained for the actual or potential expansion of its services or the reduction of

its charges to the patrons, or for such other purposes as may be authorized by its membership not inconsistent with its purposes;

(4) makes membership available on a voluntary basis, without any social, political, racial, or religious discrimination and without any discrimination on the basis of age, sex, or marital status, to all persons who can make use of its services and are willing to accept the responsibilities of membership, subject only to limitations under applicable Federal or State laws or regulations;

(5) in the case of primary cooperative organizations restricts its voting control to members or voting stockholders on a one vote per person basis and takes positive steps to insure economic democracy and maximum participation by members of the cooperative including the holding of annual meetings and, in the case of organizations owned by groups of cooperatives, provides positive protections to insure economic democracy; and

(6) is not a credit union, mutual savings bank, or mutual savings and loan association.

(b) Primary producers

No organization shall be ineligible because it produces, markets, or furnishes goods, services, or facilities on behalf of its members as primary producers, unless the dollar volume of loans made by the Bank to such organizations exceeds 10 per centum of the gross assets of the Bank.

(c) Net savings defined

As used in this section, the term "net savings" means, for any period, the borrower's gross receipts, less the operating and other expenses deductible therefrom in accordance with generally accepted accounting principles, including, without limitation, contributions to allowable reserves, and after deducting the amounts of any dividends on its capital stock or other membership capital payable during, or within forty-five days after, the close of such period.

(d) Cooperatives eligible for other Federal credit assistance

An eligible cooperative which also has been determined to be eligible for credit assistance from the Rural Electrification Administration, the National Rural Utilities Cooperative Finance Corporation, the Rural Telephone Bank, the Banks for Cooperatives or other institutions of the Farm Credit System, or the Farmers Home Administration may receive the assistance authorized by this chapter only (1) if the Bank determines that a request for assistance from any such source or sources has been rejected or denied solely because of the unavailability of funds from such source or sources, or (2) by agreement between the Bank and the agency or agencies involved.

(e) Credit unions eligible for technical assistance from Office of Self-Help Development and Technical Assistance

Notwithstanding any other provision of this section, a credit union serving predominantly low-income members (as defined by the Administrator of the National Credit Union Administration) may receive technical assistance under subchapter II of this chapter.

(Pub. L. 95-351, title I, § 105, Aug. 20, 1978, 92 Stat. 506.)

REFERENCES IN TEXT

All subchapters of this chapter, referred to in subsec. (a), was in the original "all titles of this Act", meaning titles I to III of Pub. L. 95-351. Titles I and II constitute this chapter and title III amended section 5315 of Title 5, Government Organization and Employees, and sections 856, 867, and 868 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3014, 3018 of this title.

§ 3016. Annual meetings; notice, agenda, etc.

The Bank shall hold an annual meeting of its stockholders which shall be open to the public. At least 30 days' advance notice of the time and place of the annual meeting shall be given to all stockholders. Borrowers from the Bank shall also give notice of the meeting to their members, who shall be entitled to attend. At such meeting the Bank shall give a full report of its activities during the year and its financial condition and may present proposals for future action and other matters of general concern to borrowers and organizations eligible to borrow from the Bank. Members and representatives of borrowers may present motions or resolutions relating to matters within the scope of this chapter and may participate in the discussion thereof and other matters on the agenda.

(Pub. L. 95-351, title I, § 106, Aug. 20, 1978, 92 Stat. 507.)

§ 3017. Bonds, debentures, notes and other evidences of indebtedness

(a) Authorization for public or private sale; time of issuance, interest rates, and terms and conditions; outstanding amount

The Bank is authorized to obtain funds through the public or private sale of its bonds, debentures, notes, and other evidences of indebtedness. Such obligations shall be issued at such times, bear interest at such rates, and contain such terms and conditions as the Board shall determine after consultation with the Secretary of the Treasury: *Provided, however,* That the amount of such obligations which may be outstanding at any one time pursuant to this section shall not exceed ten times the paid-in capital and surplus of the Bank.

(b) Discretionary authority for issuance to and purchase by Secretary of Treasury; preconditions; terms and conditions of purchase; terms and conditions for subsequent sale by Secretary of Treasury

The Bank is also authorized, but not required, and only so long as any of its class A stock is held by the Secretary of the Treasury, to issue its obligations to the Secretary of the Treasury, in amounts not to exceed in the aggregate such amounts as are provided in appropriations Acts and the Secretary of the Treasury may in his discretion purchase any such obligations. Each purchase of obligations of the Bank under this subsection shall be upon such terms and conditions as to yield a rate of return

not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity. The Secretary of the Treasury may sell, upon such terms and conditions and at such price or prices as he shall determine any of the obligations of the Bank acquired by him under this subsection.

(c) Purchase and sale by Bank; methods of sale and delivery

The Bank may purchase its own obligations, and may provide for the sale of any such obligations through a fiscal agent or agents, by negotiation, offer, bid, syndicate sale, or otherwise, and may deliver such obligations by book entry, wire transfer, or such other means as may be appropriate.

(d) Obligations as not guaranteed by United States and not to constitute a debt or obligation of United States

Obligations issued under this section shall not be guaranteed by the United States and shall not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the Bank.

(Pub. L. 95-351, title I, § 107, Aug. 20, 1978, 92 Stat. 507.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3012, 3022 of this title.

§ 3018. Loans

(a) General requirements for loans and commitments for loans; limitations; allocation of assistance for low-income persons; criteria and factors for making loans, etc.; publication

The Bank may make loans and commitments for loans under this subsection to any organization determined by the Bank to be eligible under the provisions of section 3015 of this title, and may purchase or discount obligations of members of such organizations if the Bank, to the exclusion of all other persons, entities, agencies, or jurisdictions, also determines that the applicant has or will have a sound organizational and financial structure, income in excess of its operating costs and assets in excess of its obligations, and a reasonable expectation of a continuing demand for its production, goods, commodities, or services, or the use of its facilities, so that the loan will be fully repayable in accordance with its terms and conditions. Commencing on October 1, 1983, the Bank shall not make any loan to a cooperative for the purpose of financing the construction, ownership, acquisition, or improvement of any structure used primarily for residential purposes if, after giving effect to such loan, the aggregate amount of all loans outstanding for such purpose would exceed 30 per centum of the gross assets of the Bank. The Board of Directors shall use its best efforts to insure that at the end of each fiscal year of the Bank at least 35 per centum of its outstanding loans are to—

(1) cooperatives at least a majority of the members of which are low-income persons, and

(2) other cooperatives, if the proceeds of such loans are directly applied to finance a facility, activity, or service that the Board finds will be used predominantly by low-income persons.

The Board shall adopt and publish in the Federal Register rules defining the term "low-income persons" for purposes of this subsection. The criteria to be applied and the factors to be considered by the Bank in making loans, loan commitments, purchases, discounts, and guarantees shall include an assessment of the impact of the loan on existing small businesses in the eligible organizations' business territory. The criteria and factors shall be stated in rules of the Bank which shall be published and made available to applicants and, upon request, to any other person or organization.

(b) Repayment requirements; criteria for terms, rates, and charges; advancement of loan proceeds

Loans under this section shall be repayable in not more than forty years and, except for loans with final due date not longer than five years from the date of the loan, shall be amortized as to principal and interest. In setting the terms, rates, and charges, it shall be the objective of the Bank to provide the type of credit needed by eligible borrowers, at the lowest reasonable cost on a sound business basis, taking into account the cost of money to the Bank, necessary reserve and expenses of the Bank, and the technical and other assistance attributable to loans under this section made available by the Bank, but so long as the Bank makes loans from the proceeds of the sale of class A stock, the interest rate shall not be less than the rates generally prevailing in the area from other sources for loans for similar purposes and maturities, taking into consideration the cost to the borrower of required purchase of class B stock in the Bank. The loan terms may provide for interest rates to vary from time to time during the repayment period of the loan in accordance with the rates being charged by the Bank for new loans at such times. The proceeds of a loan under this subsection may be advanced by the borrower to its members or stockholders under circumstances described in the bylaws or rules of the Bank.

(c) Guarantees by Bank; requirements; charges

Subject to section 3012(13) of this title, the Bank may guarantee all or any part of the principal and interest of any loan made by any State or federally chartered lending institution to any borrower if such loan is to an organization that would be an eligible borrower from the Bank for a direct loan and is on terms and conditions (including the rate of interest) which would be permissible terms and conditions for such a direct loan. The Bank may impose a charge for any such guarantee. No loan may be guaranteed by the Bank if the income therefrom to the lender is excluded from such lender's gross income for purposes of chapter 1 of title 26.

(d) Assignment of guaranteed loans; contestability of guarantee; criteria for purchase by Bank of guaranteed loan in lieu of requiring service by lender

Any loan guaranteed under subsection (c) of this section shall be assignable to the extent provided in the contract of guarantee as may be determined by the Bank. The guarantee shall be uncontestable, except for fraud or misrepresentation of which the holder had actual knowledge at the time he acquired the loan. The Bank in lieu of requiring such lender to service such guaranteed loan until final maturity or liquidation, may purchase the loan for the balance of the principal and accrued interest thereon without penalty, if it determines that (1) the liquidation of the loan would result in the insolvency of the borrower or deprive the borrower of assets essential to its continued operation, and (2) the loan will be repayable with revision of the loan rates, terms, or payment periods or other conditions not inconsistent with loans made by the Bank under subsection (a) of this section, which revisions the lender or other holder of such guaranteed loan is unwilling to make.

(e) Aggregate amount of commitments to make or guarantee loans

As long as any of the class A stock of the Bank is held by the Secretary of the Treasury, the aggregate amount of commitments by the Bank to make or guarantee loans shall not exceed such amounts as may be specified in annual appropriation Acts.

(Pub. L. 95-351, title I, § 108, Aug. 20, 1978, 92 Stat. 508.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3043 of this title.

§ 3019. Taxation by State, county, etc., taxing authority

Until the Final Government Equity Redemption Date, but not thereafter, the Bank, including its franchise, capital, reserves, surplus, mortgages, or other security holdings and income shall be exempt from taxation now or hereafter imposed by any State, county, municipality, or local taxing authority, but any real property held by the Bank shall be subject to any State, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(Pub. L. 95-351, title I, § 109, Aug. 20, 1978, 92 Stat. 509.)

§ 3020. Quarters and space for principal and other offices

Until the Final Government Equity Redemption Date, space for the principal office and any branch offices of the Bank shall be provided by the General Services Administration. Thereafter, the Bank may lease, construct, or own quarters and provide for the space requirements of its principal and other offices.

(Pub. L. 95-351, title I, § 110, Aug. 20, 1978, 92 Stat. 510.)

§ 3021. Annual report to Congress; contents

The Board of the Bank shall report annually to the appropriate committees of the Congress on the Bank's capital, operations, and financial condition and make recommendations for legislation needed to improve its services.

(Pub. L. 95-351, title I, § 111, Aug. 20, 1978, 92 Stat. 510.)

§ 3022. Authorization of additional appropriations; restrictions on use

In addition to appropriations specifically authorized in this chapter, there are authorized to be appropriated $2,000,000 for the fiscal year ending September 30, 1979, and for each of the two succeeding fiscal years, ending September 30, 1980, and September 30, 1981, such sums as may be necessary: *Provided*, That none of these appropriated sums shall be used to retire any indebtedness of the Bank incurred pursuant to section 3017 of this title. Any sums so appropriated shall remain available until expended.

(Pub. L. 95-351, title I, § 112, Aug. 20, 1978, 92 Stat. 510.)

§ 3023. Appeal procedures applicable upon denial or restriction of application for assistance

(a) If an application for assistance under this chapter is denied in whole or in part, the applicant shall be informed within thirty days in writing of the reasons for the denial or restriction.

(b) Any applicant for assistance under this chapter receiving notice of denial or restriction of the application may, within thirty days of receipt of such notice, request the Board of Directors to review the application and notice of denial or restriction for a determination of whether the action of the Bank was correctly within the terms of this chapter, the regulations, and the policy of the Board. The Board shall consider the request for review at its next meeting and promptly inform the applicant of its determination and the reasons therefor.

(Pub. L. 95-351, title I, § 113, Aug. 20, 1978, 92 Stat. 510.)

§ 3024. Conflict of interest rules; adoption and publication; requirements

The Board of Directors shall adopt and publish its own conflict of interest rules which shall be no less stringent in effect than the Federal Executive conflict of interest rules contained in Executive Order Numbered 11222 in prohibiting participation or action or the use of inside information for personal advantage on any matter involving a corporation, trust, partnership, or cooperative organization in which a board member, officer, or employee holds a substantial financial interest or holds a position as board member or senior officer, the activities of which organization might be relevant to, be competitive with, or be inconsistent with the objectives of any bank created under this chapter. These rules shall require—

(1) each nominee for elected membership on the Board established under this chapter to make public and file with the election offi-

cial before the date of election a statement of his financial interest and position, if any, in such organizations; and

(2) each senior executive officer and appointed member of the Board to file with the appointing officer, before entering that office a statement of his financial interest and position, if any, in such organizations, which shall be available for inspection upon request.

The provisions of this section shall remain in effect until the Final Government Equity Redemption Date.

(Pub. L. 95-351, title I, § 114, Aug. 20, 1978, 92 Stat. 510.)

REFERENCES IN TEXT

Executive Order Numbered 11222, referred to in text, is set out as a note under section 201 of Title 18, Crimes and Criminal Procedure.

§ 3025. Examinations and audits of operations; preconditions; implementation; reports to Congress

Until the stock of the Bank held by the United States has been fully retired, the operations of the Bank shall be examined annually under the direction of an agency or instrumentality of the Federal Government designated by the President, including the General Accounting Office, and reports of such examination shall be forwarded to the Congress. The President shall, no later than the date that 66⅔ per centum of the class A stock is held by others than the Secretary of the Treasury, establish an Office of Supervision and Audit which shall be responsible for audits and examinations of the Bank, shall assure that the objectives of this subchapter are carried out, and shall review and comment on the bylaws of the Bank and the general policies of the Bank and shall make an annual report to the Congress.

(Pub. L. 95-351, title I, § 115, Aug. 20, 1978, 92 Stat. 511.)

SUBCHAPTER II—OFFICE OF SELF-HELP DEVELOPMENT AND TECHNICAL ASSISTANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 3015 of this title.

§ 3041. Establishment; appointment, etc., of Director

(a) There is hereby established within the Bank an Office of Self-Help Development and Technical Assistance (hereinafter the "Office").

(b) The Office shall have a Director who shall be appointed by the President, with the advice and consent of the Senate, and who shall not be a member of the Board. Subject to review by the Board, the Director shall promulgate and publish in the Federal Register policies and procedures governing the operation of the Office.

(Pub. L. 95-351, title II, § 201, Aug. 20, 1978, 92 Stat. 511.)

§ 3042. Authorization of appropriations for advances; deposits into separate Account in Bank; availability of amounts

There are hereby authorized to be appropriated to the Office $10,000,000 for the fiscal year ending September 30, 1979, and for the next two succeeding fiscal years an aggregate amount not to exceed $65,000,000, for the purpose of making advances under section 3043 of this title. Any amounts appropriated to the Office shall be deposited by the Office in a separate account in the Bank (hereinafter the "Account"), and shall remain available until expended. Repayments of capital investment advances made pursuant to section 3043(a) of this title and interest supplement advances made pursuant to section 3043(b) of this title and payments of interest thereon pursuant to section 3043(c) of this title shall also be deposited in the Account. No other funds of the Bank shall be transferred into the Account. The Account shall be used by the Office only as authorized in section 3043 of this title.

(Pub. L. 95-351, title II, § 202, Aug. 20, 1978, 92 Stat. 511.)

§ 3043. Advances from Account

(a) Capital investment advances; criteria

The Office may make a capital investment advance out of the Account to any eligible cooperative, either in conjunction with or without a loan if the Office determines that—

(1)(A) the applicant's initial or supplemental capital requirements exceeds its ability to obtain such capital through a loan under section 3018 of this title or from other sources; or

(B) the membership of the applicant is, or will consist, substantially of low-income persons, as defined by the Board of Directors, or the applicant proposes to undertake to provide specialized goods, services, or facilities to serve their needs; and

(2) the applicant cannot obtain sufficient funds through a loan under section 3018 of this title or otherwise, and the applicant presents a plan which the Office determines will permit the replacement of a capital investment advance out of member equities within a period not to exceed thirty years.

(b) Interest supplement advances; criteria; amount

The Office may make advances out of the Account to pay all or part of the interest payable to the Bank or any other lender by an eligible cooperative applicant which the Office determines cannot pay a market rate of interest because it sells goods or services to, or provides facilities for the use of, persons of low income: *Provided,* That such advances will not exceed an amount equal to 4 per centum of the principal amount of the indebtedness of such applicant to the Bank or such other lender for any year in which the net income of the cooperative is insufficient to meet scheduled interest payments.

(c) Interest rate applicable to advances

Capital investment advances made by the Office pursuant to subsection (a) of this section

and interest supplement advances made by the Office pursuant to subsection (b) of this section shall bear interest at a rate determined by the Board of Directors of the Bank, and the Board of Directors may authorize an interest rate applicable to such advances lower than the rate applicable to loans by the Bank pursuant to section 3018 of this title.

(Pub. L. 95-351, title II, § 203, Aug. 20, 1978, 92 Stat. 512.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3042 of this title.

§ 3044. Services and information for organization, financing, and management of cooperatives; availability; agreements for development and dissemination; funding

The Office shall make available information and services concerning the organization, financing, and management of cooperatives to best achieve the objectives of this chapter and to best provide the means through which various types of goods, services, and facilities can be made available to members and patrons. The Office may enter into agreements with other agencies of Federal, State, and local governments, colleges and universities, foundations, or other organizations for the development and dissemination of such information, and services described in this subchapter. The Office may make or accept grants or transfer of funds for such purposes.

(Pub. L. 95-351, title II, § 204, Aug. 20, 1978, 92 Stat. 512.)

§ 3045. Investigations and surveys respecting new services, etc., by cooperative not-for-profit organizations

The Office may undertake investigations of new types of services which can more effectively be provided through cooperative not-for-profit organizations and make surveys of areas where the increased use of such organizations will contribute to the economic well-being of the community.

(Pub. L. 95-351, title II, § 205, Aug. 20, 1978, 92 Stat. 512.)

§ 3046. Financial analysis and market surveys at request of eligible cooperative

The Office may, at the request of any eligible cooperative, provide a financial analysis of the applicant's capital structure and needs and its cost of operations, survey the market for the goods or services the cooperative makes or desires to make available to its members or patrons or the users of its facilities.

(Pub. L. 95-351, title II, § 206, Aug. 20, 1978, 92 Stat. 513.)

§ 3047. Programs for training directors and staff of eligible cooperatives, and public education; development and availability; scope and implementation

The Office shall develop and make available, alone or in concert with other organizations, a program for training directors and staff of eligible cooperatives to improve their understanding of their responsibilities; the problems of and solutions for effective and efficient operation of their organizations or of cooperatives in general; and may by any means it deems appropriate, conduct membership studies, provide membership education programs, and programs for informing consumers and the general public of the advantages of cooperative action. Management supervision, review, and consultations shall be available from the Office to any eligible cooperative.

(Pub. L. 95-351, title II, § 207, Aug. 20, 1978, 92 Stat. 513.)

§ 3048. Cooperation with Federal agencies offering programs for consumer cooperatives in disseminating information

The Office shall work closely with all United States Government agencies offering programs for which consumer cooperatives may be eligible to assure that information concerning all such programs is made available to eligible cooperatives.

(Pub. L. 95-351, title II, § 208, Aug. 20, 1978, 92 Stat. 513.)

§ 3049. Authorization of appropriations for administration; availability of amounts

There are authorized to be appropriated to the Office $2,000,000 for the fiscal year ending September 30, 1979, and for each of the two succeeding fiscal years, such sums as may be necessary for the administration of this subchapter. Any sums so appropriated shall remain available until expended.

(Pub. L. 95-351, title II, § 209, Aug. 20, 1978, 92 Stat. 513.)

§ 3050. Fees for providing technical assistance services; waiver; accounting and availability

The Office may make the technical assistance services under this subchapter available for such fees as it may establish, except that such services as the Office may determine may be made available without charge to eligible cooperatives depending on the nature of the services or on ability to pay. Any fees collected shall be accounted for separately and be available for expenses of the Office.

(Pub. L. 95-351, title II, § 210, Aug. 20, 1978, 92 Stat. 513.)

CHAPTER 32—FOREIGN BANK PARTICIPATION IN DOMESTIC MARKETS [NEW]

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 619, 1813 of this title.

§ 3101. Definitions

For the purposes of this chapter—

(1) "agency" means any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent but at which deposits may not be accepted from citizens or residents of the United States;

(2) "Board" means the Board of Governors of the Federal Reserve System;

(3) "branch" means any office or any place of business of a foreign bank located in any State of the United States at which deposits are received;

(4) "Comptroller" means the Comptroller of the Currency;

(5) "Federal agency" means an agency of a foreign bank established and operating under section 3102 of this title;

(6) "Federal branch" means a branch of a foreign bank established and operating under section 3102 of this title;

(7) "foreign bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, of any such company. For the purposes of this chapter the term "foreign bank" includes, without limitation, foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating;

(8) "foreign country" means any country other than the United States, and includes any colony, dependency, or possession of any such country;

(9) "commercial lending company" means any institution, other than a bank or an organization operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.], organized under the laws of any State of the United States, or the District of Columbia which maintains credit balances incidental to or arising out of the exercise of banking powers and engages in the business of making commercial loans;

(10) "State" means any State of the United States or the District of Columbia;

(11) "State agency" means an agency of a foreign bank established and operating under the laws of any State;

(12) "State branch" means a branch of a foreign bank established and operating under the laws of any State;

(13) the terms "bank", "bank holding company", "company", "control", and "subsidiary" have the same meanings assigned to those terms in the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and the terms "controlled" and "controlling" shall be construed consistently with the term "control" as defined in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841]; and

(14) "consolidated" means consolidated in accordance with generally accepted accounting principles in the United States consistently applied.

(Pub. L. 95-369, § 1(b), Sept. 17, 1978, 92 Stat. 607.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-369, Sept. 17, 1978, 92 Stat. 607, known as the International Banking Act of 1978, which enacted this chapter and sections 347d and 611a of this title, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820 to 1823, 1828, 1829b, 1831b, and 1841 of this title, and enacted provisions set out as notes under sections 36, 247, 601, 611a, and 3101 of this title. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Bank Holding Company Act of 1956, referred to in par. (13), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17

(§ 1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

SHORT TITLE

Section 1(a) of Pub. L. 95-369 provided that: "This Act [enacting this chapter and sections 347d and 611a of this title, amending sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820 to 1823, 1828, 1829b, 1831b and 1841 of this title, and enacting provisions set out as notes under sections 36, 247, 601, and 611a of this title] may be cited as the 'International Banking Act of 1978'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 347d of this title.

§ 3102. Establishment of Federal branches and agencies by foreign bank

(a) Approval of Comptroller

Except as provided in section 3103 of this title, a foreign bank which engages directly in a banking business outside the United States may, with the approval of the Comptroller, establish one or more Federal branches or agencies in any State in which (1) it is not operating a branch or agency pursuant to State law and (2) the establishment of a branch or agency, as the case may be, by a foreign bank is not prohibited by State law.

(b) Rules and regulations; rights and privileges; duties and liabilities; exceptions

In establishing and operating a Federal branch or agency, a foreign bank shall be subject to such rules, regulations, and orders as the Comptroller considers appropriate to carry out this section, which shall include provisions for service of process and maintenance of branch and agency accounts separate from those of the parent bank. Except as otherwise specifically provided in this chapter or in rules, regulations, or orders adopted by the Comptroller under this section, operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a national bank doing business at the same location, except that (1) the requirements of section 481 of this title shall be met with respect to a Federal branch or agency if it is examined at least once in each calendar year; (2) any limitation or restriction based on the capital stock and surplus of a national bank shall be deemed to refer, as applied to a Federal branch or agency, to the dollar equivalent of the capital stock and surplus of the foreign bank, and if the foreign bank has more than one Federal branch or agency the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation; (3) a Federal branch or agency shall not be required to become a member bank, as that term is defined in section 221 of this title; and (4) a Federal agency shall not be required to become an insured bank as that term is defined in section 1813(h) of this title.

(c) Application to establish Federal branch or agency; matters considered

In acting on any application to establish a Federal branch or agency, the Comptroller shall take into account the effects of the proposal on competition in the domestic and foreign commerce of the United States, the financial and managerial resources and future prospects of the applicant foreign bank and the branch or agency, and the convenience and needs of the community to be served.

(d) Receipt of deposits and exercising of fiduciary powers at Federal agency prohibited

Notwithstanding any other provision of this section, a foreign bank shall not receive deposits or exercise fiduciary powers at any Federal agency. A foreign bank may, however, maintain at a Federal agency for the account of others credit balances incidental to, or arising out of, the exercise of its lawful powers.

(e) Maintenance of Federal branch and Federal agency in same State prohibited

No foreign bank may maintain both a Federal branch and a Federal agency in the same State.

(f) Conversion of foreign bank branch, agency or commercial lending company into Federal branch or agency; approval of Comptroller

Any branch or agency operated by a foreign bank in a State pursuant to State law and any commercial lending company controlled by a foreign bank may be converted into a Federal branch or agency with the approval of the Comptroller. In the event of any conversion pursuant to this subsection, all of the liabilities of such foreign bank previously payable at the State branch or agency, or all of the liabilities of the commercial lending company, shall thereafter be payable by such foreign bank at the branch or agency established under this subsection.

(g) Deposit requirements; asset requirements

(1) Upon the opening of a Federal branch or agency in any State and thereafter, a foreign bank, in addition to any deposit requirements imposed under section 3104 of this title, shall keep on deposit, in accordance with such rules and regulations as the Comptroller may prescribe, with a member bank designated by such foreign bank, dollar deposits or investment securities of the type that may be held by national banks for their own accounts pursuant to paragraph "Seventh" of section 24 of this title, in an amount as hereinafter set forth. Such depository bank shall be located in the State where such branch or agency is located and shall be approved by the Comptroller if it is a national bank and by the Board of Governors of the Federal Reserve System if it is a State Bank.

(2) The aggregate amount of deposited investment securities (calculated on the basis of principal amount or market value, whichever is lower) and dollar deposits for each branch or agency established and operating under this section shall be not less than the greater of (1) that amount of capital (but not surplus) which would be required of a national bank being organized at this location, or (2) 5 per centum of

the total liabilities of such branch or agency, including acceptances, but excluding (A) accrued expenses, and (B) amounts due and other liabilities to offices, branches, agencies, and subsidiaries of such foreign bank. The Comptroller may require that the assets deposited pursuant to this subsection shall be maintained in such amounts as he may from time to time deem necessary or desirable, for the maintenance of a sound financial condition, the protection of depositors, and the public interest, but such additional amount shall in no event be greater than would be required to conform to generally accepted banking practices as manifested by banks in the area in which the branch or agency is located.

(3) The deposit shall be maintained with any such member bank pursuant to a deposit agreement in such form and containing such limitations and conditions as the Comptroller may prescribe. So long as it continues business in the ordinary course such foreign bank shall, however, be permitted to collect income on the securities and funds so deposited and from time to time examine and exchange such securities.

(4) Subject to such conditions and requirements as may be prescribed by the Comptroller, each foreign bank shall hold in each State in which it has a Federal branch or agency, assets of such types and in such amount as the Comptroller may prescribe by general or specific regulation or ruling as necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors and the public interest. In determining compliance with any such prescribed asset requirements, the Comptroller shall give credit to (A) assets required to be maintained pursuant to paragraphs (1) and (2) of this subsection, (B) reserves required to be maintained pursuant to section 3105(a) of this title, and (C) assets pledged, and surety bonds payable, to the Federal Deposit Insurance Corporation to secure the payment of domestic deposits. The Comptroller may prescribe different asset requirements for branches or agencies in different States, in order to ensure competitive equality of Federal branches and agencies with State branches and agencies and domestic banks in those States.

(h) Establishment of additional branches or agencies; approval of Comptroller

A foreign bank with a Federal branch or agency operating in any State may (1) with the prior approval of the Comptroller establish and operate additional branches or agencies in the State in which such branch or agency is located on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by a national bank if the principal office of such national bank were located at the same place as the initial branch or agency in such State of such foreign bank and (2) change the designation of its initial branch or agency to any other branch or agency subject to the same limitations and restrictions as are applicable to a change in the designation of the principal office of a national bank if such principal office were located at the same place as such initial branch or agency.

(i) Termination of authority to operate Federal branch or agency

Authority to operate a Federal branch or agency shall terminate when the parent foreign bank voluntarily relinquishes it or when such parent foreign bank is dissolved or its authority or existence is otherwise terminated or canceled in the country of its organization. If (1) at any time the Comptroller is of the opinion or has reasonable cause to believe that such foreign bank has violated or failed to comply with any of the provisions of this section or any of the rules, regulations, or orders of the Comptroller made pursuant to this section, or (2) a conservator is appointed for such foreign bank or a similar proceeding is initiated in the foreign bank's country of organization, the Comptroller shall have the power, after opportunity for hearing, to revoke the foreign bank's authority to operate a Federal branch or agency. The Comptroller may, in his discretion, deny such opportunity for hearing if he determines such denial to be in the public interest. The Comptroller may restore any such authority upon due proof of compliance with the provisions of this section and the rules, regulations, or orders of the Comptroller made pursuant to this section.

(j) Receivership over assets of foreign bank in United States

(1) Whenever the Comptroller revokes a foreign bank's authority to operate a Federal branch or agency or whenever any creditor of any such foreign bank shall have obtained a judgment against it arising out of a transaction with a Federal branch or agency in any court of record of the United States or any State of the United States and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the Comptroller shall become satisfied that such foreign bank is insolvent, he may, after due consideration of its affairs, in any such case, appoint a receiver who shall take possession of all the property and assets of such foreign bank in the United States and exercise the same rights, privileges, powers, and authority with respect thereto as are now exercised by receivers of national banks appointed by the Comptroller.

(2) In any receivership proceeding ordered pursuant to this subsection (j), whenever there has been paid to each and every depositor and creditor of such foreign bank whose claim or claims shall have been proved or allowed, the full amount of such claims arising out of transactions had by them with any branch or agency of such foreign bank located in any State of the United States, except (A) claims that would not represent an enforceable legal obligation against such branch or agency if such branch or agency were a separate legal entity, and (B) amounts due and other liabilities to other offices or branches or agencies of, and wholly owned (except for a nominal number of directors' shares) subsidiaries of, such foreign bank, and all expenses of the receivership, the Comptroller or the Federal Deposit Insurance Corporation, where that Corporation has been ap-

pointed receiver of the foreign bank, shall turn over the remainder, if any, of the assets and proceeds of such foreign bank to the head office of such foreign bank, or to the duly appointed domiciliary liquidator or receiver of such foreign bank.

(Pub. L. 95-369, § 4, Sept. 17, 1978, 92 Stat. 610.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (b), see References in Text note set out under section 3101 of this title.

The National Bank Act, referred to in subsec. (b), is act June 3, 1864, ch. 106, 13 Stat. 99, as amended, which is classified generally to chapter 2 (§ 21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

Section 3104 of this title, referred to in subsec. (g)(1), was in the original a reference to section 6 of Pub. L. 95-369, which enacted section 3104 of this title and amended sections 1813, 1815, 1817, 1818, 1820 to 1823, 1828, 1829b, and 1831b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3101, 3105 of this title.

§ 3103. Interstate banking by foreign banks

(a) Limitations

Except as provided by subsection (b) of this section, (1) no foreign bank may directly or indirectly establish and operate a Federal branch outside of its home State unless (A) its operation is expressly permitted by the State in which it is to be operated, and (B) the foreign bank shall enter into an agreement or undertaking with the Board to receive only such deposits at the place of operation of such Federal branch as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act [12 U.S.C. 611 et seq.] under rules and regulations administered by the Board; (2) no foreign bank may directly or indirectly establish and operate a State branch outside of its home State unless (A) it is approved by the bank regulatory authority of the State in which such branch is to be operated, and (B) the foreign bank shall enter into an agreement or undertaking with the Board to receive only such deposits at the place of operation of such State branch as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act under rules and regulations administered by the Board; (3) no foreign bank may directly or indirectly establish and operate a Federal agency outside of its home State unless its operation is expressly permitted by the State in which it is to be operated; (4) no foreign bank may directly or indirectly establish and operate a State agency or commercial lending company subsidiary outside of its home State, unless its establishment and operation is approved by the bank regulatory authority of the State in which it is to be operated; and (5) no foreign bank may directly or indirectly acquire any voting shares of, interest in, or substantially all of the assets of a bank located outside of its home State if such acquisition would be prohibited under section 1842(d) of this title if the foreign bank were a bank holding company the operations of whose banking subsidiaries were principally conducted in the foreign bank's home State. Notwithstanding any other provisions of Federal or State law, deposits received by any Federal or State branch subject to the limitations of an agreement or undertaking imposed under this subsection shall not be subject to any requirement of mandatory insurance by the Federal Deposit Insurance Corporation.

(b) Continuance of lawful interstate banking operations previously commenced

Unless its authority to do so is lawfully revoked otherwise than pursuant to this section, a foreign bank, notwithstanding any restriction or limitation imposed under subsection (a) of this section, may establish and operate, outside its home State, any State branch, State agency, or bank or commercial lending company subsidiary which commenced lawful operation or for which an application to commence business had been lawfully filed with the appropriate State or Federal authority, as the case may be, on or before July 27, 1978.

(c) Determination of home State of foreign bank

For the purposes of this section, the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in more than one State, is whichever of such States is so determined by election of the foreign bank, or, in default of such election, by the Board.

(Pub. L. 95-369, § 5, Sept. 17, 1978, 92 Stat. 613.)

REFERENCES IN TEXT

Section 25(a) of the Federal Reserve Act, referred to in subsec. (a), is classified to subchapter II (§ 611 et seq.) of chapter 6 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3102 of this title.

§ 3104. Insurance of deposits

(a) No foreign bank may establish or operate a Federal branch which receives deposits of less than $100,000 unless the branch is an insured branch as defined in section 1813(s) of this title, or unless the Comptroller determines by order or regulation that the branch is not engaged in domestic retail deposit activities requiring deposit insurance protection, taking account of the size and nature of depositors and deposit accounts.

(b) After September 17, 1978, no foreign bank may establish a branch, and after one year following such date no foreign bank may operate a branch, in any State in which the deposits of a bank organized and existing under the laws of that State would be required to be insured, unless the branch is an insured branch as defined in section 1813(s) of this title, or unless the branch will not thereafter accept deposits of less than $100,000, or unless the Federal Deposit Insurance Corporation determines by order or regulation that the branch is not engaged in domestic retail deposit activities requiring deposit insurance protection, taking account of the size and nature of depositors and deposit accounts.

Notwithstanding the previous paragraph, a branch of a foreign bank in operation on September 17, 1978 which has applied for Federal deposit insurance pursuant to section 1815 of this title by September 17, 1979, and has not had such application denied, may continue to accept domestic retail deposits until January 31, 1980.

(Pub. L. 95-369, § 6(a), (b), Sept. 17, 1978, 92 Stat. 614; Pub. L. 96-64, Sept. 14, 1979, 93 Stat. 412.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-64 extended time for foreign banks to obtain required deposit insurance with respect to domestic existing branches.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1818, 3102 of this title.

§ 3105. Authority of Federal Reserve System

(a) Bank reserves

(1)(A) Except as provided in paragraph (2) of this subsection, sections 371a, 371b, 371b-1, 374, 374a, 461, 464, and 465 of this title shall apply to every Federal branch and Federal agency of a foreign bank in the same manner and to the same extent as if the Federal branch or Federal agency were a member bank as that term is defined in section 221 of this title; but the Board either by general or specific regulation or ruling may waive the minimum and maximum reserve ratios prescribed under sections 461, 463, 464, 465, and 466 of this title and may prescribe any ratio, not more than 22 per centum, for any obligation of any such Federal branch or Federal agency that the Board may deem reasonable and appropriate, taking into consideration the character of business conducted by such institutions and the need to maintain vigorous and fair competition between and among such institutions and member banks. The Board may impose reserve requirements on Federal branches and Federal agencies in such graduated manner as it deems reasonable and appropriate.

(B) After consultation and in cooperation with the State bank supervisory authorities, the Board may make applicable to any State branch or State agency any requirement made applicable to, or which the Board has authority to impose upon, any Federal branch or agency under subparagraph (A) of this paragraph.

(2) A branch or agency shall be subject to this subsection only if (A) its parent foreign bank has total worldwide consolidated bank assets in excess of $1,000,000,000; (B) its parent foreign bank is controlled by a foreign company which owns or controls foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1,000,000,000; or (C) its parent foreign bank is controlled by a group of foreign companies that own or control foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1,000,000,000.

(b) Examination of branches and agencies by Board

(1) The Board may make examinations of each branch or agency of a foreign bank, and of each commercial lending company or bank controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank, the cost of which shall be assessed against and paid by such foreign bank or company, as the case may be. The Board shall, insofar as possible, use the reports of examinations made by the Comptroller, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this subsection.

(2) Each branch or agency of a foreign bank, other than a Federal branch or agency, shall be subject to section 335 of this title and the provision requiring the reports of condition contained in section 324 of this title to the same extent and in the same manner as if the branch or agency were a State member bank. In addition to any requirements imposed under section 3102 of this title, each Federal branch and agency shall be subject to section 248(a) of this title and to section 483 of this title to the same extent and in the same manner as if it were a member bank.

(c) Reports to committees of Congress

On or before two years after September 17, 1978, the Board after consultation with the appropriate State bank supervisory authorities shall report to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the United States Senate its recommendations with respect to the implementation of this chapter, including any recommended requirements such as limitations on loans to affiliates or capital adequacy requirements which should be imposed on foreign banks to carry out the purposes of this chapter. Not later than one hundred and eighty days after September 17, 1978, the Board shall report to such Committees the steps which have been taken to consult and cooperate with State bank supervisory authorities as required by subsection (a)(1)(B) of this section.

(Pub. L. 95-369, § 7(a), (c), (d), Sept. 17, 1978, 92 Stat. 620, 621.)

REFERENCES IN TEXT

Reference in subsec. (a)(1)(A) to section 371b of this title in the original was a reference to subsection (j) of section 19 of the Federal Reserve Act. Subsequent to the enactment of this section another subsection (j) of section 19 of the Federal Reserve Act was enacted by Pub. L. 95-630, title I, § 102, Nov. 10, 1978, 92 Stat. 3642, and was classified to section 505 of this title.

Sections 461, 463, 464, 465, and 466 of this title, referred to in subsec. (a)(1)(A), in the original read "section 19 of the Federal Reserve Act." Provisions of section 19 relating to minimum and maximum reserve ratios are classified to the cited sections. For complete classification of section 19 to the Code, see Tables.

For definition of "this chapter", referred to in subsec. (c), see References in Text note set out under section 3101 of this title.

CODIFICATION

Subsecs. (b) and (c) of this section were originally subsecs. (c) and (d) of section 7 of Pub. L. 95-369, which enacted this section. Subsec. (b) of section 7 of Pub. L. 95-369 was classified to section 347d of this title, and subsecs. (c) and (d) were editorially redesignated as (b) and (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 347d, 1813, 3102 of this title.

§ 3106. Nonbanking activities of foreign banks

(a) Applicability of Bank Holding Company Acts

Except as otherwise provided in this section (1) any foreign bank that maintains a branch or agency in a State, (2) any foreign bank or foreign company controlling a foreign bank that controls a commercial lending company organized under State law, and (3) any company of which any foreign bank or company referred to in (1) and (2) is a subsidiary shall be subject to the provisions of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and to section 1850 of this title and chapter 22 of this title in the same manner and to the same extent that bank holding companies are subject thereto, except that any such foreign bank or company shall not by reason of this subsection be deemed a bank holding company for purposes of section 3 of the Bank Holding Company Act of 1956 [12 U.S.C. 1842].

(b) Ownership or control of shares of nonbanking companies for certain period

Until December 31, 1985, a foreign bank or other company to which subsection (a) of this section applies on September 17, 1978, may retain direct or indirect ownership or control of any voting shares of any nonbanking company in the United States that it owned, controlled, or held with power to vote on September 17, 1978, or engage in any nonbanking activities in the United States in which it was engaged on such date.

(c) Engagement in nonbanking activities after certain period

After December 31, 1985, a foreign bank or other company to which subsection (a) of this section applies on September 17, 1978, may continue to engage in nonbanking activities in the United States in which directly or through an affiliate it was lawfully engaged on July 26, 1978 (or on a date subsequent to July 26, 1978, in the case of activities carried on as the result of the direct or indirect acquisition, pursuant to a binding written contract entered into on or before July 26, 1978, of another company engaged in such activities at the time of acquisition), and may engage directly or through an affiliate in nonbanking activities in the United States which are covered by an application to engage in such activities which was filed on or before July 26, 1978; except that the Board by order, after opportunity for hearing, may terminate the authority conferred by this subsection on any such foreign bank or company to engage directly or through an affiliate in any activity otherwise permitted by this subsection if it determines having due regard to the purposes of this chapter and the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States. Notwithstanding subsection (a) of this section, a foreign bank or company referred to in this subsection may retain ownership or control of any voting shares (or, where necessary to prevent dilution of its voting interest, acquire additional voting shares) of any domestically-controlled affiliate covered in 1978 which engages in the business of underwriting, distributing, or otherwise buying or selling stocks, bonds, and other securities in the United States. Except in the case of affiliates described in the preceding sentence, nothing in this subsection shall be construed to authorize any foreign bank or company referred to in this subsection, or any affiliate thereof, to engage in activities authorized by this subsection through the acquisition, pursuant to a contract entered into after July 26, 1978, of any interest in or the assets of a going concern engaged in such activities. Any foreign bank or company that is authorized to engage in any activity pursuant to this subsection but, as a result of action of the Board, is required to terminate such activity may retain the ownership of control of shares in any company carrying on such activity for a period of two years from the date on which its authority was so terminated by the Board. As used in this subsection, the term "affiliate" shall mean any company more than 5 per centum of whose voting shares is directly or indirectly owned or controlled or held with power to vote by the specified foreign bank or company, and the term "domestically-controlled affiliate covered in 1978" shall mean any affiliate the majority of whose voting shares is owned by a company or group of companies organized under the laws of the United States or any State thereof, if it has been under continuous domestic majority-controlling ownership since July 26, 1978, and if a foreign bank or group of foreign banks does not own or control, directly or indirectly, 25 per centum or more of its voting shares.

(d) Construction of terms

Nothing in this section shall be construed to define a branch or agency of a foreign bank or a commercial lending company controlled by a foreign bank or foreign company that controls a foreign bank as a "bank" for the purposes of any provisions of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], or section 1850 of this title, except that any such branch, agency or commercial lending company subsidiary shall be deemed a "bank" or "banking subsidiary", as the case may be, for the purposes of applying the prohibitions of chapter 22 of this title and the exemptions provided in sections 4(c)(1), 4(c)(2), 4(c)(3), and 4(c)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(1), (2), (3), and (4)) to any foreign bank or other company to which subsection (a) of this section applies.

(Pub. L. 95-369, § 8(a)-(d), Sept. 17, 1978, 92 Stat. 622, 623.)

REFERENCES IN TEXT

The Bank Holding Company Act of 1956, referred to in subsecs. (a), (c), and (d), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§ 1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

For definition of "this chapter", referred to in subsec. (c), see References in Text note set out under section 3101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1818 of this title.

§ 3106a. Compliance with State and Federal laws

(1) Every branch or agency of a foreign bank and every commercial lending company controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank shall conduct its operations in the United States in full compliance with provisions of any law of the United States or any State thereof which—

(A) prohibit discrimination against any individual or other person on the basis of the race, color, religion, sex, marital status, age, or national origin of (i) such individual or other person or (ii) any officer, director, employee, or creditor of, or any owner of any interest in, such individual or other person; and

(B) apply to national banks or State-chartered banks doing business in the State in which such branch or agency or commercial lending company, as the case may be, is doing business.

(2) No application for a branch or agency shall be approved by the Comptroller or by a State bank supervisory authority, as the case may be, unless the entity making the application has agreed to conduct all of its operations in the United States in full compliance with provisions of any law of the United States or any State thereof which—

(A) prohibit discrimination against individuals or other persons on the basis of the race, color, religion, sex, marital status, age, or national origin of (i) such individual or other person or (ii) any officer, director, employee, or creditor of, or any owner of any interest in, such individual or other person; and

(B) apply to national banks or State-chartered banks doing business in the State in which the entity to be established is to do business.

(Pub. L. 95-369, § 9(b), as added Pub. L. 95-630, title III, § 311, Nov. 10, 1978, 92 Stat. 3678.)

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

§ 3107. Maintenance of office other than branch or agency by foreign bank; registration with Secretary of Treasury; application of State law

(a) Any foreign bank that maintains an office other than a branch or agency in any State shall register with the Secretary of the Treasury in accordance with rules prescribed by him, within one hundred and eighty days after September 17, 1978, or the date on which the office is established, whichever is later.

(b) This chapter does not authorize the establishment of any such office in any State in contravention of State law.

(Pub. L. 95-369, § 10, Sept. 17, 1978, 92 Stat. 624.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (b), see References in Text note set out under section 3101 of this title.

§ 3108. Regulation and enforcement

(a) Rules, regulations and orders

The Comptroller, the Board, and the Federal Deposit Insurance Corporation, are authorized and empowered to issue such rules, regulations, and orders as each of them may deem necessary in order to perform their respective duties and functions under this chapter and to administer and carry out the provisions and purposes of this chapter and prevent evasions thereof.

(b) Enforcement under Federal Deposit Insurance Act provisions

In addition to any powers, remedies, or sanctions otherwise provided by law, compliance with the requirements imposed under this chapter or any amendment made by this chapter may be enforced under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] by any appropriate Federal banking agency as defined in that Act [12 U.S.C. 1811 et seq.].

(c) Powers of Federal Reserve Board and Federal Deposit Insurance Corporation

In the case of any provision of the Federal Reserve Act [12 U.S.C. 221 et seq.] to which a foreign bank or branch thereof is subject under this chapter, and which is made applicable to nonmember insured banks by the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], whether by cross-reference to the Federal Reserve Act or by a provision in substantially the same terms in the Federal Deposit Insurance Act, the administration, interpretation, and enforcement of such provision, insofar as it relates to any foreign bank or branch thereof as to which the Board is an appropriate Federal banking agency, are vested in the Board, but where the making of any report to the Board or a Federal Reserve bank is required under any such provision, the Federal Deposit Insurance Corporation may require that a duplicate of any such report be sent directly to it. This subsection shall not be construed to impair any power of the Federal Deposit Insurance Corporation to make regular or special examinations or to require special reports.

(Pub. L. 95-369, § 13, Sept. 17, 1978, 92 Stat. 624.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 3101 of this title.

The Federal Deposit Insurance Act, referred to in subsecs. (b) and (c), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

The Federal Reserve Act, referred to in subsec. (c), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§ 221 et

seq.) of this title. For complete classification of this Act to the Code, see Distribution note set out under section 226 of this title and Tables.

CHAPTER 33—DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS [NEW]

Sec.
3201. Definitions.
3202. Dual service of management official as management official of unaffiliated institution or holding company in same area, town, or village prohibited.
3203. Dual service of management official of $1,000,000,000 institution or holding company as management official or unaffiliated $500,000,000 institution or holding company prohibited.
3204. Exceptions.
3205. Management official in position prior to November 10, 1978.
3206. Administration and enforcement.
3207. Rules and regulations.

§ 3201. Definitions

As used in this chapter—

(1) the term "depository institution" means a commercial bank, a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union;

(2) the term "depository holding company" means a bank holding company as defined in section 1841(a) of this title, a company which would be a bank holding company as defined in section 1841(a) of this title but for the exemption contained in subsection (a)(5)(F) thereof, or a savings and loan holding company as defined in section 1730a(a)(1)(D) of this title;

(3) the characterization of any corporation (including depository institutions and depository holding companies), as an "affiliate of," or as "affiliated" with any other corporation means that—

(A) one of the corporations is a depository holding company and the other is a subsidiary thereof, or both corporations are subsidiaries of the same depository holding company, as the term "subsidiary" is defined in either section 1841(d) of this title in the case of a bank holding company or section 1730a(a)(1)(H) of this title in the case of a savings and loan holding company; or

(B) more than 50 per centum of the voting stock of one corporation is beneficially owned in the aggregate by one or more persons who also beneficially own in the aggregate more than 50 per centum of the voting stock of the other corporation; or

(C) one of the corporations is a trust company all of the stock of which, except for directors qualifying shares, was owned by one or more mutual savings banks on November 10, 1978, and the other corporation is a mutual savings bank; or

(D) one of the corporations is a bank, insured by the Federal Deposit Insurance Corporation and chartered under State law, the voting securities of which are held by other banks, as permitted by State law, and which bank is primarily engaged in providing banking services for other banks and not the public: *Provided, however,* That in no case shall the voting securities of such corporation be held by any such other bank in excess of 5 per centum of the paid-in capital and 5 per centum of the surplus of such other bank; or

(E) one of the corporations is a bank, chartered under State law and insured by the Federal Deposit Insurance Corporation, the voting securities of which are held only by persons who are officers of other banks, as permitted by State law, and which bank is primarily engaged in providing banking services for other banks and not the public: *Provided, however,* That in no case shall the voting securities of such corporation be held by such officers of other banks in excess of 6 per centum of the paid-in capital and 6 per centum of the surplus of such a bank.

(4) the term "management official" means an employee or officer with management functions, a director (including an advisory or honorary director), a trustee of a business organization under the control of trustees, or any person who has a representative or nominee serving in any such capacity: *Provided,* That if a corporator, trustee, director, or other officer of a State-chartered savings bank or cooperative bank is specifically authorized under the laws of the State in which said institution is located to serve as a trustee, director, or other officer of a State-chartered trust company which does not make real estate mortgage loans and does not accept savings deposits from natural persons, then, for the purposes of this chapter, such corporator, trustee, director, or other officer shall not be deemed to be a management official of such trust company: *And provided further,* That if a management official of a State-chartered trust company which does not make real estate mortgage loans and does not accept savings deposits from natural persons is specifically authorized under the laws of the State in which said institution is located to serve as a corporator, trustee, director, or other officer of a State-chartered savings bank or cooperative bank, then, for the purposes of this chapter, such management official shall not be deemed to be a management official of any such savings bank or cooperative bank; and

(5) the term "office" used with reference to a depository institution means either a principal office or a branch.

(Pub. L. 95-630, title II, § 202, Nov. 10, 1978, 92 Stat. 3672.)

References in Text

This chapter, referred to in text, in the original read "this title", meaning title II of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3672, known as the Depository Management Interlocks Act, which enacted this chapter, amended sections 1464, 1730, and 1818 of this title, and enacted provisions set out as a note below. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATE

Chapter effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

SHORT TITLE

Section 201 of title II of Pub. L. 95-630 provided that: "This title [which enacted this chapter and amended sections 1464, 1730, and 1818 of this title] may be cited as the 'Depository Institution Management Interlocks Act'."

§ 3202. Dual service of management official as management official of unaffiliated institution or holding company in same area, town, or village prohibited

A management official of a depository institution or a depository holding company may not serve as a management official of any other depository institution or depository holding company not affiliated therewith if an office of one of the institutions or any depository institution that is an affiliate of such institutions is located within either—

(1) the same standard metropolitan statistical area as defined by the Office of Management and Budget, except in the case of depository institutions with less than $20,000,000 in assets in which case the provision of paragraph (2) shall apply, as that in which an office of the other institution or any depository institution that is an affiliate of such other institution is located, or

(2) the same city, town, or village as that in which an office of the other institution or any depository institution that is an affiliate of such other institution is located, or in any city, town, or village contiguous or adjacent thereto.

(Pub. L. 95-630, title II, § 203, Nov. 10, 1978, 92 Stat. 3673.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3204, 3205, 3207 of this title.

§ 3203. Dual service of management official of $1,000,000,000 institution or holding company as management official of unaffiliated $500,000,000 institution or holding company prohibited

If a depository institution or a depository holding company has total assets exceeding $1,000,000,000, a management official of such institution or any affiliate thereof may not serve as a management official of any other nonaffiliated depository institution or depository holding company having total assets exceeding $500,000,000 or as a management official of any affiliate of such other institution.

(Pub. L. 95-630, title II, § 204, Nov. 10, 1978, 92 Stat. 3673.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3204, 3205, 3207 of this title.

§ 3204. Exceptions

The prohibitions contained in sections 3202 and 3203 of this title shall not apply in the case of any one or more of the following or subsidiary thereof:

(1) A depository institution or depository holding company which has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function.

(2) A corporation operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.].

(3) A credit union being served by a management official of another credit union.

(4) A depository institution or depository holding company which does not do business within any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands except as an incident to its activities outside the United States.

(5) A State-chartered savings and loan guaranty corporation.

(6) A Federal Home Loan Bank or any other bank organized specifically to serve depository institutions.

(Pub. L. 95-630, title II, § 205, Nov. 10, 1978, 92 Stat. 3673.)

REFERENCES IN TEXT

Section 25 of the Federal Reserve Act, referred to in par. (2), is classified to subchapter I (§ 601 et seq.) of chapter 6 of this title. Section 25A of the Federal Reserve Act probably refers to 25(a) of that Act which is classified to subchapter II (§ 611 et seq.) of chapter 6 of this title.

§ 3205. Management official in position prior to November 10, 1978

A person whose service in a position as a management official began prior to November 10, 1978, and was not immediately prior to November 10, 1978, in violation of section 19 of title 15 is not prohibited by section 3202 or section 3203 of this title from continuing to serve in that position for a period of ten years after November 10, 1978. The appropriate Federal banking agency (as set forth in section 3207 of this title) may provide a reasonable period of time for compliance with this chapter, not exceeding fifteen months, after any change in circumstances which makes such service prohibited by this chapter.

(Pub. L. 95-630, title II, § 206, Nov. 10, 1978, 92 Stat. 3674.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 3201 of this title.

§ 3206. Administration and enforcement

This chapter shall be administered and enforced by—

(1) the Comptroller of the Currency with respect to national banks and banks located in the District of Columbia,

(2) the Board of Governors of the Federal Reserve System with respect to State banks which are members of the Federal Reserve System, and bank holding companies,

(3) the Board of Directors of the Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation,

(4) the Federal Home Loan Bank Board with respect to institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, and savings and loan holding companies,

(5) the National Credit Union Administration with respect to credit unions the accounts of which are insured by the National Credit Union Administration, and

(6) upon referral by the agencies named in the foregoing paragraphs (1) through (5), the Attorney General shall have the authority to enforce compliance by any person with this chapter.

(Pub. L. 95-630, title II, § 207, Nov. 10, 1978, 92 Stat. 3674.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 3201 of this title.

§ 3207. Rules and regulations

Rules and regulations to carry out this chapter, including rules or regulations which permit service by a management official which would otherwise be prohibited by section 3202 or section 3203 of this title, may be prescribed by—

(1) the Comptroller of the Currency with respect to national banks and banks located in the District of Columbia,

(2) the Board of Governors of the Federal Reserve System with respect to State banks which are members of the Federal Reserve System, and bank holding companies,

(3) the Board of Directors of the Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation,

(4) the Federal Home Loan Bank Board with respect to institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, and savings and loan holding companies, and

(5) the National Credit Union Administration with respect to credit unions the accounts of which are insured by the National Credit Union Administration.

(Pub. L. 95-630, title II, § 209, Nov. 10, 1978, 92 Stat. 3675.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 3201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3205 of this title.

CHAPTER 34—FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL [NEW]

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3303. Financial Institutions Examination Council.
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(b) Chairmanship.
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(a) Establishment of principals and standards.
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(c) Development of uniform reporting system.
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(e) Affect on Federal regulatory agency research and development of new financial institutions supervisory agencies.
(f) Annual report.
3306. State liaison.
3307. Administration.
(a) Authority of Chairman of Council.
(b) Use of personnel, services, and facilities of Federal financial institutions regulatory agencies, Federal Reserve banks, and Federal Home Loan Banks.
(c) Compensation, authority, and duties of officers and employees; experts and consultants.
3308. Access to books, accounts, records, etc., by Council.

§ 3301. Declaration of purpose

It is the purpose of this chapter to establish a Financial Institutions Examination Council which shall prescribe uniform principles and standards for the Federal examination of financial institutions by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, and the National Credit Union Administration and make recommendations to promote uniformity in the supervision of these financial institutions. The Council's actions shall be designed to promote consistency in such examination and to insure progressive and vigilant supervision.

(Pub. L. 95-630, title X, § 1002, Nov. 10, 1978, 92 Stat. 3694.)

EFFECTIVE DATE

Chapter effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

SHORT TITLE

Section 1001 of title X of Pub. L. 95-630 provided that: "This title [which enacted this chapter and amended section 67 of Title 31, Money and Finance] may be cited as the 'Federal Financial Institutions Examination Council Act of 1978'."

§ 3302. Definitions

As used in this chapter—

(1) the term "Federal financial institutions regulatory agencies" means the Office of the

Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration;

(2) the term "Council" means the Financial Institutions Examination Council; and

(3) the term "financial institution" means a commercial bank, a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, or a credit union;[1]

(Pub. L. 95-630, title X, § 1003, Nov. 10, 1978, 92 Stat. 3694.)

§ 3303. Financial Institutions Examination Council

(a) Establishment; composition

There is established the Financial Institutions Examination Council which shall consist of—

(1) the Comptroller of the Currency,

(2) the Chairman of the Board of Directors of the Federal Deposit Insurance Corporation,

(3) a Governor of the Board of Governors of the Federal Reserve System designated by the Chairman of the Board,

(4) the Chairman of the Federal Home Loan Bank Board, and

(5) the Chairman of the National Credit Union Administration Board.

(b) Chairmanship

The members of the Council shall select the first chairman of the Council. Thereafter the chairmanship shall rotate among the members of the Council.

(c) Term of office

The term of the Chairman of the Council shall be two years.

(d) Designation of officers and employees

The members of the Council may, from time to time, designate other officers or employees of their respective agencies to carry out their duties on the Council.

(e) Compensation and expenses

Each member of the Council shall serve without additional compensation but shall be entitled to reasonable expenses incurred in carrying out his official duties as such a member.

(Pub. L. 95-630, title X, § 1004, Nov. 10, 1978, 92 Stat. 3694.)

§ 3304. Costs and expenses of Council

One-fifth of the costs and expenses of the Council, including the salaries of its employees, shall be paid by each of the Federal financial institutions regulatory agencies. Annual assessments for such share shall be levied by the Council based upon its projected budget for the year, and additional assessments may be made during the year if necessary.

(Pub. L. 95-630, title X, § 1005, Nov. 10, 1978, 92 Stat. 3695.)

[1] So in original. The semicolon probably should be a period.

§ 3305. Functions of Council

(a) Establishment of principals and standards

The Council shall establish uniform principles and standards and report forms for the examination of financial institutions which shall be applied by the Federal financial institutions regulatory agencies.

(b) Making recommendations regarding supervisory matters and adequacy of supervisory tools

(1) The Council shall make recommendations for uniformity in other supervisory matters, such as, but not limited to, classifying loans subject to country risk, identifying financial institutions in need of special supervisory attention, and evaluating the soundness of large loans that are shared by two or more financial institutions. In addition, the Council shall make recommendations regarding the adequacy of supervisory tools for determining the impact of holding company operations on the financial institutions within the holding company and shall consider the ability of supervisory agencies to discover possible fraud or questionable and illegal payments and practices which might occur in the operation of financial institutions or their holding companies.

(2) When a recommendation of the Council is found unaccepted[1] by one or more of the applicable Federal financial institutions regulatory agencies, the agency or agencies shall submit to the Council, within a time period specified by the Council, a written statement of the reasons the recommendation is unacceptable.

(c) Development of uniform reporting system

The Council shall develop uniform reporting systems for federally supervised financial institutions, their holding companies, and nonfinancial institution subsidiaries of such institutions or holding companies. The authority to develop uniform reporting systems shall not restrict or amend the requirements of section 78*l*(i) of title 15.

(d) Conducting schools for examiners and assistant examiners

The Council shall conduct schools for examiners and assistant examiners employed by the Federal financial institutions regulatory agencies. Such schools shall be open to enrollment by employees of State financial institutions supervisory agencies under conditions specified by the Council.

(e) Affect on Federal regulatory agency research and development of new financial institutions supervisory agencies

Nothing in this chapter shall be construed to limit or discourage Federal regulatory agency research and development of new financial institutions supervisory methods and tools, nor to preclude the field testing of any innovation devised by any Federal regulatory agency.

(f) Annual report

Not later than April 1 of each year, the Council shall prepare an annual report covering its activities during the preceding year.

[1] So in original. Probably should be "unacceptable".

(Pub. L. 95-630, title X, § 1006, Nov. 10, 1978, 92 Stat. 3695.)

§ 3306. State liaison

To encourage the application of uniform examination principles and standards by State and Federal supervisory agencies, the Council shall establish a liaison committee composed of five representatives of State agencies which supervise financial institutions which shall meet at least twice a year with the Council. Members of the liaison committee shall receive a reasonable allowance for necessary expenses incurred in attending meetings.

(Pub. L. 95-630, title X, § 1007, Nov. 10, 1978, 92 Stat. 3696.)

§ 3307. Administration

(a) Authority of Chairman of Council

The Chairman of the Council is authorized to carry out and to delegate the authority to carry out the internal administration of the Council, including the appointment and supervision of employees and the distribution of business among members, employees, and administrative units.

(b) Use of personnel, services, and facilities of Federal financial institutions regulatory agencies, Federal Reserve banks, and Federal Home Loan Banks

in[1] addition to any other authority conferred upon it by this chapter, in carrying out its functions under this chapter, the Council may utilize, with their consent and to the extent practical, the personnel, services, and facilities of the Federal financial institutions regulatory agencies, Federal Reserve banks, and Federal Home Loan Banks, with or without reimbursement therefor.

(c) Compensation, authority, and duties of officers and employees; experts and consultants

In addition, the Council may—

(1) subject to the provisions of title 5 relating to the competitive service, classification, and General Schedule pay rates, appoint and fix the compensation of such officers and employees as are necessary to carry out the provisions of this chapter, and to prescribe the authority and duties of such officers and employees; and

(2) obtain the services of such experts and consultants as are necessary to carry out the provisions of this chapter.

(Pub. L. 95-630, title X, § 1008, Nov. 10, 1978, 92 Stat. 3696.)

REFERENCES IN TEXT

The provisions of title 5 relating to the competitive service, referred to in subsec. (c), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The provisions of title 5 relating to classification, referred to in subsec. (c), are classified generally to chapter 51 (§ 5101 et seq.) and to subchapter III (§ 5331 et seq.) of chapter 53 of Title 5.

The provisions of title 5 relating to General Schedule pay rates, referred to in subsec. (c), are set out under section 5332 of Title 5.

[1] So in original. Probably should be "In".

§ 3308. Access to books, accounts, records, etc., by Council

For the purpose of carrying out this chapter, the Council shall have access to all books, accounts, records, reports, files, memorandums, papers, things, and property belonging to or in use by Federal financial institutions regulatory agencies, including reports of examination of financial institutions or their holding companies from whatever source, together with workpapers and correspondence files related to such reports, whether or not a part of the report, and all without any deletions.

(Pub. L. 95-630, title X, § 1009, Nov. 10, 1978, 92 Stat. 3696.)

CHAPTER 35—RIGHT TO FINANCIAL PRIVACY [NEW]

Sec.

3401. Definitions.
3402. Access to financial records by Government authorities prohibited; exceptions.
3403. Confidentiality of financial records.
- (a) Release of records by financial institutions prohibited.
- (b) Release of records upon certification of compliance with chapter.
- (c) Notification to Government authority of existence of relevant information in records.
- (d) Release of records as incident to perfection of security interest, proving a claim in bankruptcy, collecting a debt, or processing an application with regard to a Government loan, loan guarantee, etc.

3404. Customer authorizations.
- (a) Statement furnished by customer to financial institution and Government authority; contents.
- (b) Authorization as condition of doing business prohibited.
- (c) Right of customer to access to financial institution's record of disclosures.

3405. Administrative subpena and summons.
3406. Search warrants.
- (a) Applicability of Federal Rules of Criminal Procedure.
- (b) Mailing of copy and notice to customer.
- (c) Court-ordered delays in mailing.

3407. Judicial subpena.
3408. Formal written request.
3409. Delayed notice.
- (a) Application by Government authority; findings.
- (b) Grant of delay order; duration and specifications; extensions; copy of request and notice to customer.
- (c) Notice requirement respecting emergency access to financial records.
- (d) Preservation of memorandums, affidavits, or other papers.

3410. Customer challenges.
- (a) Filing of motion to quash or application to enjoin; proper court; contents.
- (b) Filing of response; additional proceedings.
- (c) Decision of court.
- (d) Appeals.
- (e) Sole judicial remedy available to customer.
- (f) Affect on challenges by financial institutions.

Sec.
3411. Duty of financial institutions.
3412. Use of information.
(a) Transfer of financial records to other agencies or departments; certification.
(b) Mailing of copy of certification and notice to customer.
(c) Court-ordered delays in mailing.
(d) Exchanges of examination reports by supervisory agencies; transfer of financial records to defend customer action; withholding of information.
3413. Exceptions.
(a) Disclosure of financial records not identified with particular customers.
(b) Disclosure pursuant to exercise of supervisory, regulatory, or monetary functions of financial institutions.
(c) Disclosure pursuant to Internal Revenue Code.
(d) Disclosure pursuant to Federal statute or rule promulgated thereunder.
(e) Disclosure pursuant to Federal Rules of Criminal Procedure or comparable rules of other courts.
(f) Disclosure pursuant to administrative subpena issued by administrative law judge.
(g) Disclosure pursuant to legitimate law enforcement inquiry respecting name, address, account number, and type of account of particular customers.
(h) Disclosure pursuant to lawful proceeding, investigation, etc., directed at financial institution or legal entity or consideration or administration respecting Government loans, loan guarantees, etc.
(i) Disclosure pursuant to issuance of subpena or court order respecting grand jury proceeding.
(j) Disclosure pursuant to proceeding, investigation, etc., instituted by General Accounting Office and directed at a government authority.
3414. Special procedures.
3415. Cost reimbursement.
3416. Jurisdiction.
3417. Civil penalties.
(a) Liability of agencies or departments of United States or financial institutions.
(b) Disciplinary action for willful or intentional violation of chapter by agents or employees of department or agency.
(c) Good faith defense.
(d) Exclusive judicial remedies and sanctions.
3418. Injunctive relief.
3419. Suspension of limitations.
3420. Grand jury information.
3421. Reporting requirements.
3422. Applicability to Securities and Exchange Commission.

§ 3401. Definitions

For the purpose of this chapter, the term—

(1) "financial institution" means any office of a bank, savings bank, card issuer as defined in section 1602(n) of title 15, industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) "financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution;

(3) "Government authority" means any agency or department of the United States, or any officer, employee, or agent thereof;

(4) "person" means an individual or a partnership of five or fewer individuals;

(5) "customer" means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name;

(6) "supervisory agency" means, with respect to any particular financial institution any of the following which has statutory authority to examine the financial condition or business operations of that institution—

(A) the Federal Deposit Insurance Corporation;

(B) the Federal Savings and Loan Insurance Corporation;

(C) the Federal Home Loan Bank Board;

(D) the National Credit Union Administration;

(E) the Board of Governors of the Federal Reserve System;

(F) the Comptroller of the Currency;

(G) the Securities and Exchange Commission;

(H) the Secretary of the Treasury, with respect to the Bank Secrecy Act [12 U.S.C. 1951 et seq.] and the Currency and Foreign Transactions Reporting Act [31 U.S.C. 1051 et seq.] (Public Law 91-508, title I and II); or

(I) any State banking or securities department or agency; and

(7) "law enforcement inquiry" means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

(Pub. L. 95-630, title XI, § 1101, Nov. 10, 1978, 92 Stat. 3697.)

References in Text

The Bank Secrecy Act, referred to in par. (6)(H), probably means Pub. L. 91-508, title I, Oct. 26, 1970, 84 Stat. 1114, which is classified principally to chapter 21 (§ 1951 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

The Currency and Foreign Transaction Reporting Act, as amended, referred to in par. (6)(H), is Pub. L. 91-508, title II, Oct. 26, 1970, 84 Stat. 1118, which is classified generally to chapter 21 (§ 1051 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 1051 of Title 31 and Tables.

Effective Date

Chapter (except for section 3415 of this title) effective upon the expiration of 120 days after Nov. 10,

1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

SHORT TITLE

Section 1100 of Title XI of Pub. L. 95-630 provided that: "This title [which enacted this chapter] may be cited as the 'Right to Financial Privacy Act of 1978'."

§ 3402. Access to financial records by Government authorities prohibited; exceptions

Except as provided by section 3403(c) or (d), 3413, or 3414 of this title, no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution unless the financial records are reasonably described and—

(1) such customer has authorized such disclosure in accordance with section 3404 of this title;

(2) such financial records are disclosed in response to an administrative subpena or summons which meets the requirements of section 3405 of this title;

(3) such financial records are disclosed in response to a search warrant which meets the requirements of section 3406 of this title;

(4) such financial records are disclosed in response to a judicial subpena which meets the requirements of section 3407 of this title; or

(5) such financial records are disclosed in response to a formal written request which meets the requirements of section 3408 of this title.

(Pub. L. 95-630, title XI, § 1102, Nov. 10, 1978, 92 Stat. 3697.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3404, 3405, 3406, 3407, 3408, 3413 of this title.

§ 3403. Confidentiality of financial records

(a) Release of records by financial institutions prohibited

No financial institution, or officer, employees, or agent of a financial institution, may provide to any Government authority access to or copies of, or the information contained in, the financial records of any customer except in accordance with the provisions of this chapter.

(b) Release of records upon certification of compliance with chapter

A financial institution shall not release the financial records of a customer until the Government authority seeking such records certifies in writing to the financial institution that it has complied with the applicable provisions of this chapter.

(c) Notification to Government authority of existence of relevant information in records

Nothing in this chapter shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a Government authority that such institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation.

(d) Release of records as incident to perfection of security interest, proving a claim in bankruptcy, collecting a debt, or processing an application with regard to a Government loan, loan guarantee, etc.

(1) Nothing in this chapter shall preclude a financial institution, as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary, from providing copies of any financial record to any court or Government authority.

(2) Nothing in this chapter shall preclude a financial institution, as an incident to processing an application for assistance to a customer in the form of a Government loan, loan guaranty, or loan insurance agreement, or as an incident to processing a default on, or administering, a Government guaranteed or insured loan, from initiating contact with an appropriate Government authority for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under a loan, loan guaranty, or loan insurance agreement.

(Pub. L. 95-630, title XI, § 1103, Nov. 10, 1978, 92 Stat. 3698.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 3411, 3413, 3414, 3415 of this title.

§ 3404. Customer authorizations

(a) Statement furnished by customer to financial institution and Government authority; contents

A customer may authorize disclosure under section 3402(1) of this title if he furnishes to the financial institution and to the Government authority seeking to obtain such disclosure a signed and dated statement which—

(1) authorizes such disclosure for a period not in excess of three months;

(2) states that the customer may revoke such authorization at any time before the financial records are disclosed;

(3) identifies the financial records which are authorized to be disclosed;

(4) specifies the purposes for which, and the Government authority to which, such records may be disclosed; and

(5) states the customer's rights under this chapter.

(b) Authorization as condition of doing business prohibited

No such authorization shall be required as a condition of doing business with any financial institution.

(c) Right of customer to access to financial institution's record of disclosures

The customer has the right, unless the Government authority obtains a court order as provided in section 3409 of this title, to obtain a copy of the record which the financial institution shall keep of all instances in which the customer's record is disclosed to a Government authority pursuant to this section, including the identity of the Government authority to which such disclosure is made.

(Pub. L. 95-630, title XI, § 1104, Nov. 10, 1978, 92 Stat. 3698; Pub. L. 96-3, Mar. 7, 1979, 93 Stat. 5.)

AMENDMENTS

1979—Subsec. (d). Pub. L. 96-3 struck out subsec. (d) which had directed that all financial institutions promptly notify all of their customers of their rights under this chapter, that the Board of Governors of the Federal Reserve System prepare a statement of customers' rights under this chapter, and that the supplying of such a statement to their customers by the financial institutions be deemed compliance with the notification requirement.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 3409, 3421 of this title.

§ 3405. Administrative subpena and summons

A Government authority may obtain financial records under section 3402(2) of this title pursuant to an administrative subpena or summons otherwise authorized by law only if—

(1) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpena or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpena or summons was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached subpena or summons are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] for the following purpose: If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States district courts:

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer."; and

(3) ten days have expired from the date of service of the notice or fourteen days have expired from the date of mailing the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 3410 of this title have been complied with.

(Pub. L. 95-630, title XI, § 1105, Nov. 10, 1978, 92 Stat. 3699.)

REFERENCES IN TEXT

The Right to Financial Privacy Act of 1978, referred to in par. (2), is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (§ 3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 3409, 3411, 3421 of this title.

§ 3406. Search warrants

(a) Applicability of Federal Rules of Criminal Procedure

A Government authority may obtain financial records under section 3402(3) of this title only if it obtains a search warrant pursuant to the Federal Rules of Criminal Procedure.

(b) Mailing of copy and notice to customer

No later than ninety days after the Government authority serves the search warrant, it shall mail to the customer's last known address a copy of the search warrant together with the following notice:

"Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date) for the following purpose: . You may have rights under the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.].".

(c) Court-ordered delays in mailing

Upon application of the Government authority, a court may grant a delay in the mailing of the notice required in subsection (b) of this section, which delay shall not exceed one hundred and eighty days following the service of the warrant, if the court makes the findings required in section 3409(a) of this title. If the court so finds, it shall enter an ex parte order granting the requested delay and an order prohibiting the financial institution from disclosing that records have been obtained or that a search warrant for such records has been executed. Additional delays of up to ninety days may be granted by the court upon application, but only in accordance with this subsection. Upon expiration of the period of delay of notification of the customer, the following notice shall be mailed to the customer along with a copy of the search warrant:

"Records or information concerning your transactions held by the financial institution

named in the attached search warrant were obtained by this (agency or department) on (date). Notification was delayed beyond the statutory ninety-day delay period pursuant to a determination by the court that such notice would seriously jeopardize an investigation concerning . You may have rights under the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.]."

(Pub. L. 95-630, title XI, § 1106, Nov. 10, 1978, 92 Stat. 3700.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (a), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The Right to Financial Privacy Act of 1978, referred to in subsecs. (b) and (c), is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (§ 3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 3409, 3421 of this title.

§ 3407. Judicial subpena

A Government authority may obtain financial records under section 3402(4) of this title pursuant to judicial subpena only if—

(1) such subpena is authorized by law and there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpena has been served upon the customer or mailed to his last known address on or before the date on which the subpena was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions which are held by the financial institution named in the attached subpena are being sought by this (agency or department or authority) in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] for the following purpose: If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of the Court.

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer;" and

(3) ten days have expired from the date of service or fourteen days from the date of mailing of the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 3410 of this title have been complied with.

(Pub. L. 95-630, title XI, § 1107, Nov. 10, 1978, 92 Stat. 3700.)

REFERENCES IN TEXT

The Right to Financial Privacy Act of 1978, referred to in par. (2), is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (§ 3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 3409, 3411, 3421 of this title.

§ 3408. Formal written request

A Government authority may request financial records under section 3402(5) of this title pursuant to a formal written request only if—

(1) no administrative summons or subpena authority reasonably appears to be available to that Government authority to obtain financial records for the purpose for which such records are sought;

(2) the request is authorized by regulations promulgated by the head of the agency or department;

(3) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry; and

(4)(A) a copy of the request has been served upon the customer or mailed to his last known address on or before the date on which the request was made to the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached request are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] for the following purpose:

"If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the

Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States District Courts:

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein may be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer;" and

(B) ten days have expired from the date of service or fourteen days from the date of mailing of the notice by the customer and within such time period the customer has not filed a sworn statement and an application to enjoin the Government authority in an appropriate court, or the customer challenge provisions of section 3410 of this title have been complied with.

(Pub. L. 95-630, title XI, § 1108, Nov. 10, 1978, 92 Stat. 3701.)

REFERENCES IN TEXT

The Right to Financial Privacy Act of 1978, referred to in par. (4), is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (§ 3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 3409, 3421 of this title.

§ 3409. Delayed notice

(a) Application by Government authority; findings

Upon application of the Government authority, the customer notice required under section 3404(c), 3405(2), 3406(c), 3407(2), 3408(4), or 3412(b) of this title may be delayed by order of an appropriate court if the presiding judge or magistrate finds that—

(1) the investigation being conducted is within the lawful jurisdiction of the Government authority seeking the financial records;

(2) there is reason to believe that the records being sought are relevant to a legitimate law enforcement inquiry; and

(3) there is reason to believe that such notice will result in—

(A) endangering life or physical safety of any person;

(B) flight from prosecution;

(C) destruction of or tampering with evidence;

(D) intimidation of potential witnesses; or

(E) otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same extent as the circumstances in the preceeding [1] subparagraphs.

An application for delay must be made with reasonable specificity.

(b) Grant of delay order; duration and specifications; extensions; copy of request and notice to customer

(1) If the court makes the findings required in paragraphs (1), (2), and (3) of subsection (a) of this section, it shall enter an ex parte order granting the requested delay for a period not to exceed ninety days and an order prohibiting the financial institution from disclosing that records have been obtained or that a request for records has been made, except that, if the records have been sought by a Government authority exercising financial controls over foreign accounts in the United States under section 5(b) of the Trading With the Enemy Act [12 U.S.C. 95a, 50 App. U.S.C. 5(b)], the International Emergency Economic Powers Act (title II, Public Law 95-223) [50 U.S.C. 1701 et seq.], or section 287c of title 22, and the court finds that there is reason to believe that such notice may endanger the lives or physical safety of a customer or group of customers, or any person or group of persons associated with a customer, the court may specify that the delay be indefinite.

(2) Extensions of the delay of notice provided in paragraph (1) of up to ninety days each may be granted by the court upon application, but only in accordance with this subsection.

(3) Upon expiration of the period of delay of notification under paragraph (1) or (2), the customer shall be served with or mailed a copy of the process or request together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions which are held by the financial institution named in the attached process or request were supplied to or requested by the Government authority named in the process or request on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] that such notice might (state reason).
The purpose of the investigation or official proceeding was .".

(c) Notice requirement respecting emergency access to financial records

When access to financial records is obtained pursuant to section 3414(b) of this title (emergency access), the Government authority shall, unless a court has authorized delay of notice pursuant to subsections (a) and (b) of this section, as soon as practicable after such records

[1] So in original. Probably should read "preceding".

are obtained serve upon the customer, or mail by registered or certified mail to his last known address, a copy of the request to the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records concerning your transactions held by the financial institution named in the attached request were obtained by (agency or department) under the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] on (date) for the following purpose: Emergency access to such records was obtained on the grounds that (state grounds).".

(d) Preservation of memorandums, affidavits, or other papers

Any memorandum, affidavit, or other paper filed in connection with a request for delay in notification shall be preserved by the court. Upon petition by the customer to whom such records pertain, the court may order disclosure of such papers to the petitioner unless the court makes the findings required in subsection (a) of this section.

(Pub. L. 95-630, title XI, § 1109, Nov. 10, 1978, 92 Stat. 3702.)

REFERENCES IN TEXT

The International Emergency Economic Powers Act, as amended, referred to in subsec. (b)(1), is Pub. L. 95-223, title II, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§ 1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The Right to Financial Privacy Act of 1978, referred to in subsecs. (b)(3) and (c), is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (§ 3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3404, 3406, 3412, 3414, 3421 of this title.

§ 3410. Customer challenges

(a) Filing of motion to quash or application to enjoin; proper court; contents

Within ten days of service or within fourteen days of mailing of a subpena, summons, or formal written request, a customer may file a motion to quash an administrative summons or judicial subpena, or an application to enjoin a Government authority from obtaining financial records pursuant to a formal written request, with copies served upon the Government authority. A motion to quash a judicial subpena shall be filed in the court which issued the subpena. A motion to quash an administrative summons or an application to enjoin a Government authority from obtaining records pursuant to a formal written request shall be filed in the appropriate United States district court. Such motion or application shall contain an affidavit or sworn statement—

(1) stating that the applicant is a customer of the financial institution from which financial records pertaining to him have been sought; and

(2) stating the applicant's reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated by the Government authority in its notice, or that there has not been substantial compliance with the provisions of this chapter.

Service shall be made under this section upon a Government authority by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this chapter. For the purposes of this section, "delivery" has the meaning stated in rule 5(b) of the Federal Rules of Civil Procedure.

(b) Filing of response; additional proceedings

If the court finds that the customer has complied with subsection (a) of this section, it shall order the Government authority to file a sworn response, which may be filed in camera if the Government includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided within seven calendar days of the filing of the Government's response.

(c) Decision of court

If the court finds that the applicant is not the customer to whom the financial records sought by the Government authority pertain, or that there is a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry, it shall deny the motion or application, and, in the case of an administrative summons or court order other than a search warrant, order such process enforced. If the court finds that the applicant is the customer to whom the records sought by the Government authority pertain, and that there is not a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed or shall enjoin the Government authority's formal written request.

(d) Appeals

A court ruling denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer. An appeal of a ruling denying a motion or application under this section may be taken by the customer (1) within such period of time as provided by law as part of any appeal from a final order in any legal proceeding initiated against him arising out of or based upon the financial records, or (2) within thirty days after a notification that no legal proceeding is contemplated against him. The Government authority obtaining the financial records shall promptly notify a customer when a determination has been made

that no legal proceeding against him is contemplated. After one hundred and eighty days from the denial of the motion or application, if the Government authority obtaining the records has not initiated such a proceeding, a supervisory official of the Government authority shall certify to the appropriate court that no such determination has been made. The court may require that such certifications be made, at reasonable intervals thereafter, until either notification to the customer has occurred or a legal proceeding is initiated as described in clause (A).

(e) Sole judicial remedy available to customer

The challenge procedures of this chapter constitute the sole judicial remedy available to a customer to oppose disclosure of financial records pursuant to this chapter.

(f) Affect on challenges by financial institutions

Nothing in this chapter shall enlarge or restrict any rights of a financial institution to challenge requests for records made by a Government authority under existing law. Nothing in this chapter shall entitle a customer to assert the rights of a financial institution.

(Pub. L. 95-630, title XI, § 1110, Nov. 10, 1978, 92 Stat. 3703.)

REFERENCES IN TEXT

Rule 5(b) of the Federal Rules of Civil Procedure, referred to in subsec. (a), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3405, 3407, 3408, 3413, 3421 of this title.

§ 3411. Duty of financial institutions

Upon receipt of a request for financial records made by a Government authority under section 3405 or 3407 of this title, the financial institution shall, unless otherwise provided by law, proceed to assemble the records requested and must be prepared to deliver the records to the Government authority upon receipt of the certificate required under section 3403(b) of this title.

(Pub. L. 95-630, title XI, § 1111, Nov. 10, 1978, 92 Stat. 3705.)

§ 3412. Use of information

(a) Transfer of financial records to other agencies or departments; certification

Financial records originally obtained pursuant to this chapter shall not be transferred to another agency or department unless the transferring agency or department certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department.

(b) Mailing of copy of certification and notice to customer

When financial records subject to this chapter are transferred pursuant to subsection (a) of this section, the transferring agency or department shall, within fourteen days, send to the customer a copy of the certification made pursuant to subsection (a) of this section and the following notice, which shall state the nature of the law enforcement inquiry with reasonable specificity: "Copies of, or information contained in, your financial records lawfully in possession of have been furnished to pursuant to the Right of Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] for the following purpose: . If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974 [5 U.S.C. 552a]."

(c) Court-ordered delays in mailing

Notwithstanding subsection (b) of this section, notice to the customer may be delayed if the transferring agency or department has obtained a court order delaying notice pursuant to section 3409(a) and (b) of this title and that order is still in effect, or if the receiving agency or department obtains a court order authorizing a delay in notice pursuant to section 3409(a) and (b) of this title. Upon the expiration of any such period of delay, the transferring agency or department shall serve to the customer the notice specified in subsection (b) of this section and the agency or department that obtained the court order authorizing a delay in notice pursuant to section 3409(a) and (b) of this title shall serve to the customer the notice specified in section 3409(b) of this title.

(d) Exchanges of examination reports by supervisory agencies; transfer of financial records to defend customer action; withholding of information

Nothing in this chapter prohibits any supervisory agency from exchanging examination reports or other information with another supervisory agency. Nothing in this chapter prohibits the transfer of a customer's financial records needed by counsel for a Government authority to defend an action brought by the customer. Nothing in this chapter shall authorize the withholding of information by any officer or employee of a supervisory agency from a duly authorized committee or subcommittee of the Congress.

(Pub. L. 95-630, title XI, § 1112, Nov. 10, 1978, 92 Stat. 3705.)

REFERENCES IN TEXT

The Right of Financial Privacy Act of 1978, and the Financial Privacy Act of 1978, referred to in subsec. (b), both probably mean title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, known as the Right to Financial Privacy Act of 1978, which is classified generally to this chapter (§ 3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

The Privacy Act of 1974, referred to in subsec. (b), is Pub. L. 93-579, Dec. 31, 1974, 88 Stat. 1896, which enacted section 552a of Title 5, Government Organization and Employees, and provisions set out as notes under section 552a of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3409, 3413 of this title.

§ 3413. Exceptions

(a) Disclosure of financial records not identified with particular customers

Nothing in this chapter prohibits the disclosure of any financial records or information which is not identified with or identifiable as being derived from the financial records of a particular customer.

(b) Disclosure pursuant to exercise of supervisory, regulatory, or monetary functions of financial institutions

Nothing in this chapter prohibits examination by or disclosure to any supervisory agency of financial records or information in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.

(c) Disclosure pursuant to Internal Revenue Code

Nothing in this chapter prohibits the disclosure of financial records in accordance with procedures authorized by the Internal Revenue Code [26 U.S.C. 1 et seq.].

(d) Disclosure pursuant to Federal statute or rule promulgated thereunder

Nothing in this chapter shall authorize the withholding of financial records or information required to be reported in accordance with any Federal statute or rule promulgated thereunder.

(e) Disclosure pursuant to Federal Rules of Criminal Procedure or comparable rules of other courts

Nothing in this chapter shall apply when financial records are sought by a Government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the Government authority and the customer are parties.

(f) Disclosure pursuant to administrative subpena issued by administrative law judge

Nothing in this chapter shall apply when financial records are sought by a Government authority pursuant to an administrative subpena issued by an administrative law judge in an adjudicatory proceeding subject to section 554 of title 5 and to which the Government authority and the customer are parties.

(g) Disclosure pursuant to legitimate law enforcement inquiry respecting name, address, account number, and type of account of particular customers

The notice requirements of this chapter and sections 3410 and 3412 of this title shall not apply when a Government authority by a means described in section 3402 of this title and for a legitimate law enforcement inquiry is seeking only the name, address, account number, and type of account of any customer or ascertainable group of customers associated (1) with a financial transaction or class of financial transactions, or (2) with a foreign country or subdivision thereof in the case of a Government authority exercising financial controls over foreign accounts in the United States under section 5(b) the Trading With the Enemy Act [12 U.S.C. 95a, 50 App. U.S.C. 5(b)]; the International Emergency Economic Powers Act (title II, Public Law 95-223) [50 U.S.C. 1701 et seq.]; or section 287c of title 22.

(h) Disclosure pursuant to lawful proceeding, investigation, etc., directed at financial institution or legal entity or consideration or administration respecting Government loans, loan guarantees, etc.

(1) Nothing in this chapter (except sections 3403, 3417 and 3418 of this title) shall apply when financial records are sought by a Government authority—

(A) in connection with a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records or at a legal entity which is not a customer; or

(B) in connection with the authority's consideration or administration of assistance to the customer in the form of a Government loan, loan guaranty, or loan insurance program.

(2) When financial records are sought pursuant to this subsection, the Government authority shall submit to the financial institution the certificate required by section 3403(b) of this title. For access pursuant to paragraph (1)(B), no further certification shall be required for subsequent access by the certifying Government authority during the term of the loan, loan guaranty, or loan insurance agreement.

(3) After the effective date of this chapter, whenever a customer applies for participation in a Government loan, loan guaranty, or loan insurance program, the Government authority administering such program shall give the customer written notice of the authority's access rights under this subsection. No further notification shall be required for subsequent access by that authority during the term of the loan, loan guaranty, or loan insurance agreement.

(4) Financial records obtained pursuant to this subsection may be used only for the purpose for which they were originally obtained, and may be transferred to another agency or department only when the transfer is to facilitate a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records, or at a legal entity which is not a customer, except that—

(A) nothing in this paragraph prohibits the use or transfer of a customer's financial records needed by counsel representing a Government authority in a civil action arising from a Government loan, loan guaranty, or loan insurance agreement; and

(B) nothing in this paragraph prohibits a Government authority providing assistance to a customer in the form of a loan, loan guaranty, or loan insurance agreement from using or transferring financial records necessary to process, service or foreclose a loan, or to collect on an indebtedness to the Government resulting from a customer's default.

(5) Notification that financial records obtained pursuant to this subsection may relate to a potential civil, criminal, or regulatory violation by a customer may be given to an agency or department with jurisdiction over that viola-

tion, and such agency or department may then seek access to the records pursuant to the provisions of this chapter.

(6) Each financial institution shall keep a notation of each disclosure made pursuant to paragraph (1)(B) of this subsection, including the date of such disclosure and the Government authority to which it was made. The customer shall be entitled to inspect this information.

(i) Disclosure pursuant to issuance of subpena or court order respecting grand jury proceeding

Nothing in this chapter (except sections 3415 and 3420 of this title) shall apply to any subpena or court order issued in connection with proceedings before a grand jury.

(j) Disclosure pursuant to proceeding, investigation, etc., instituted by General Accounting Office and directed at a government authority

This chapter shall not apply when financial records are sought by the General Accounting Office pursuant to an authorized proceeding, investigation, examination or audit directed at a government authority.

(Pub. L. 95-630, title XI, § 1113, Nov. 10, 1978, 92 Stat. 3706.)

REFERENCES IN TEXT

The Internal Revenue Code, referred to in subsec. (c), is classified generally to Title 26, Internal Revenue Code.

The Federal Rules of Civil Procedure, referred to in subsec. (e), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Criminal Procedure, referred to in subsec. (e), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The International Emergency Economic Powers Act, as amended, referred to in subsec. (g), is Pub. L. 95-223, title II, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§ 1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The effective date of this chapter, referred to in subsec. (h)(3), is the date upon the expiration of 120 days after Nov. 10, 1978. See section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 3415 of this title.

§ 3414. Special procedures

(a)(1) Nothing in this chapter (except sections 3415, 3417, 3418, and 3421 of this title) shall apply to the production and disclosure of financial records pursuant to requests from—

(A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities; or

(B) the Secret Service for the purpose of conducting its protective functions (18 U.S.C. 3056; 3 U.S.C. 202, Public Law 90-331, as amended).

(2) In the instances specified in paragraph (1), the Government authority shall submit to the financial institution the certificate required in section 3403(b) of this title signed by a supervisory official of a rank designated by the head of the Government authority.

(3) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that a Government authority described in paragraph (1) has sought or obtained access to a customer's financial records.

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

(b)(1) Nothing in this chapter shall prohibit a Government authority from obtaining financial records from a financial institution if the Government authority determines that delay in obtaining access to such records would create imminent danger of—

(A) physical injury to any person;

(B) serious property damage; or

(C) flight to avoid prosecution.

(2) In the instances specified in paragraph (1), the Government shall submit to the financial institution of the certificate required in section 3403(b) of this title signed by a supervisory official of a rank designated by the head of the Government authority.

(3) Within five days of obtaining access to financial records under this subsection, the Government authority shall file with the appropriate court a signed, sworn statement of a supervisory official of a rank designated by the head of the Government authority setting forth the grounds for the emergency access. The Government authority shall thereafter comply with the notice provisions of section 3409(c) of this title.

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

(Pub. L. 95-630, title XI, § 1114, Nov. 10, 1978, 92 Stat. 3707.)

REFERENCES IN TEXT

Public Law 90-331, as amended, referred to in subsec. (a)(1)(B), is Pub. L. 90-331, June 6, 1968, 82 Stat. 170, as amended, which is set out as a note under section 3056 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 3409, 3421 of this title.

§ 3415. Cost reimbursement

Except for records obtained pursuant to section 3403(d) or 3413(a) through (h) of this title, or as otherwise provided by law, a Government authority shall pay to the financial institution assembling or providing financial records pertaining to a customer and in accordance with procedures established by this chapter a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced. The Board of Governors of the Federal Reserve System shall, by regulation, establish the rates and conditions under which such payment may be made.

(Pub. L. 95-630, title XI, § 1115(a), Nov. 10, 1978, 92 Stat. 3708.)

EFFECTIVE DATE

Section 1115(b) of Pub. L. 95-630 provided that: "This section shall take effect on October 1, 1979."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3413, 3414 of this title.

§ 3416. Jurisdiction

An action to enforce any provision of this chapter may be brought in any appropriate United States district court without regard to the amount in controversy within three years from the date on which the violation occurs or the date of discovery of such violation, whichever is later.

(Pub. L. 95-630, title XI, § 1116, Nov. 10, 1978, 92 Stat. 3708.)

§ 3417. Civil penalties

(a) Liability of agencies or departments of United States or financial institutions

Any agency or department of the United States or financial institution obtaining or disclosing financial records or information contained therein in violation of this chapter is liable to the customer to whom such records relate in an amount equal to the sum of—

(1) $100 without regard to the volume of records involved;

(2) any actual damages sustained by the customer as a result of the disclosure;

(3) such punitive damages as the court may allow, where the violation is found to have been willful or intentional; and

(4) in the case of any successful action to enforce liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Disciplinary action for willful or intentional violation of chapter by agents or employees of department or agency

Whenever the court determines that any agency or department of the United States has violated any provision of this chapter and the court finds that the circumstances surrounding the violation raise questions of whether an officer or employee of the department or agency acted willfully or intentionally with respect to the violation, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. The Commission after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(c) Good faith defense

Any financial institution or agent or employee thereof making a disclosure of financial records pursuant to this chapter in good-faith reliance upon a certificate by any Government authority shall not be liable to the customer for such disclosure.

(d) Exclusive judicial remedies and sanctions

The remedies and sanctions described in this chapter shall be the only authorized judicial remedies and sanctions for violations of this chapter.

(Pub. L. 95-630, title XI, § 1117, Nov. 10, 1978, 92 Stat. 3708.)

TRANSFER OF FUNCTIONS

All functions vested by statute in the Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3413, 3414 of this title.

§ 3418. Injunctive relief

In addition to any other remedy contained in this chapter, injunctive relief shall be available to require that the procedures of this chapter are complied with. In the event of any successful action, costs together with reasonable attorney's fees as determined by the court may be recovered.

(Pub. L. 95-630, title XI, § 1118, Nov. 10, 1978, 92 Stat. 3709.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3413, 3414 of this title.

§ 3419. Suspension of limitations

If any individual files a motion or application under this chapter which has the effect of delaying the access of a Government authority to financial records pertaining to such individual, any applicable statute of limitations shall be deemed to be tolled for the period extending from the date such motion or application was filed until the date upon which the motion or application is decided.

(Pub. L. 95-630, title XI, § 1119, Nov. 10, 1978, 92 Stat. 3709.)

§ 3420. Grand jury information

Financial records about a customer obtained from a financial institution pursuant to a subpena issued under the authority of a Federal grand jury—

(1) shall be returned and actually presented to the grand jury;

(2) shall be used only for the purpose of considering whether to issue an indictment or presentment by that grand jury, or of prosecuting a crime for which that indictment or presentment is issued, or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure;

(3) shall be destroyed or returned to the financial institution if not used for one of the purposes specified in paragraph (2); and

(4) shall not be maintained, or a description of the contents of such records shall not be maintained by any Government authority other than in the sealed records of the grand jury, unless such record has been used in the prosecution of a crime for which the grand jury issued an indictment or presentment or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure.

(Pub. L. 95-630, title XI, § 1120, Nov. 10, 1978, 92 Stat. 3709.)

REFERENCES IN TEXT

Rule 6(e) of the Federal Rules of Criminal Procedure, referred to in pars. (2) and (4), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3413 of this title.

§ 3421. Reporting requirements

(a) In April of each year, the Director of the Administrative Office of the United States Courts shall send to the appropriate committees of Congress a report concerning the number of applications for delays of notice made pursuant to section 3409 of this title and the number of customer challenges made pursuant to section 3410 of this title during the preceding calendar year. Such report shall include: the identity of the Government authority requesting a delay of notice; the number of notice delays sought and the number granted under each subparagraph of section 3409(a)(3) of this title; the number of notice delay extensions sought and the number granted; and the number of customer challenges made and the number that are successful.

(b) In April of each year, each Government authority that requests access to financial records of any customer from a financial institution pursuant to section 3404, 3405, 3406, 3407, 3408, 3409 or 3414 of this Title shall send to the appropriate committees of Congress a report describing requests made during the preceding calendar year. Such report shall include the number of requests for records made pursuant to each section of this chapter listed in the preceding sentence and any other related information deemed relevant or useful by the Government authority.

(Pub. L. 95-630, title XI, § 1121, Nov. 10, 1978, 92 Stat. 3710.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3414 of this title.

§ 3422. Applicability to Securities and Exchange Commission

The Securities and Exchange Commission shall not be subject to the provisions of this chapter for a period of two years from November 10, 1978.

(Pub. L. 95-630, title XI, § 1122, Nov. 10, 1978, 92 Stat. 3710.)